SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 446.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

DEFENDANTS' ABSTRACT OF TESTIMONY.

P. F. DUNNE and
N. H. LOOMIS,
Solicitors for Defendants.

No. 993—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
Defendants.

DEFENDANTS' ABSTRACT OF TESTIMONY.

P. F. DUNNE and
N. H. LOOMIS,
Solicitors for Defendants.

In the Circuit Court of the United States for the District of Utah.

UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; The Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark,
Defendants.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME I.

NEW YORK CITY, DECEMBER 1, 1908.

*(3) ALEXANDER MILLAR. Millar.

Testimony given before Interstate Commerce Commission, January 4th, 1907, in the city of New York.

Witness is secretary of Union Pacific Railroad Company, of the Oregon Short Line Railroad, assistant secretary of the Oregon Railroad and Navigation Company, and of the Southern Pacific Company. The Oregon Railroad and Navigation Company is the owner of steamships. The other companies do not, as far as witness knows, operate steamships. The Union Pacific does not own

Secretary of Harriman Lines.

*The numbers in parenthesis refer to the pages of the printed testimony.

any steamship lines to the knowledge of witness. It is a stockholder in the Occidental and Oriental Steamship Company. The steamers of the Navigation Company sail from Portland, Oregon, to points on the Columbia and Willamette Rivers, and also to San Francisco. The San Francisco and Portland Steamship Company goes to San Francisco as successor to the Oregon Railroad and Navigation Company. The Navigation Company has no steamers engaged in trade with China and Japan. It has no stock in any company engaged in traffic between this country and the Orient. The ownership of the stock of the Occidental and Oriental Steamship Company is joint.

O. R. & N. Steamships.

(4) Thinks minority stockholders are individuals as well as corporations. Thinks the Southern Pacific is a part owner. The Southern Pacific Company is a leasing and owning company of railway from Portland through San Francisco, California, Arizona, New Mexico, Texas and Louisiana to New Orleans. It owns through stock ownership the companies operating the railroads between those points. "Q. And controls them? A. I should think possibly." Witness is secretary of the Southern Pacific Company, of Kentucky. That company has an office in Beechmont, Ky., also in New York; the general offices are in San Francisco and Oakland. The corporate headquarters of the company under the laws of Kentucky are located at Beechmont. Beechmont is in the suburbs of Louisville, Ky. M. B. Bergeron is secretary of the Morgan's Louisiana and Texas R. R. & S. S. Co. Witness is assistant secretary. The principal office of that company is in New Orleans. Witness does not know as to the amount of stock of the Morgan's Louisiana and Texas R. R. & S. S. Co. owned by the Southern Pacific Company.

Status of S. P. as a leasing and owning Co.

(5) The Southern Pacific Company votes the stock it owns, but witness is unable to state the proportion. Thinks it has substantial control. It owns a line of steamships running in connection with the Southern Pacific System from New Orleans to New York. Southern Pacific Company as an operating company does not connect with the steamship line at New Orleans, but connects with the Texas lines at El Paso. Generally speaking it owns the stock of and controls the line of railway from Portland to New Orleans. As a matter of fact Southern Pacific Company has no line in Texas or Louisiana. The Morgan's Louisiana and Texas line runs from New Orleans to the Sabine River, in connection with the Louisiana Railroad Company. Thinks the Southern Pacific owns the stock of these companies. The steamship line connects with that railway at New Orleans. "Q. So that by steamship and rail the Southern Pacific Company controls lines of transportation from Portland, Oregon, through San Francisco, California, New Mexico, Arizona, Texas, Louisiana and New York City? A. Yes." The Southern Pacific owns the stock of and controls and operates by lease the Central Pacific Railway, extending from San Francisco to Ogden. The

Relations of S. P. to Morgan S. S. Co. and Lines in Texas.

Union Pacific owns the line of railway from Council Bluffs and from Kansas City to Denver and to Ogden and Salt Lake.

U. P. Lines.

(6) Union Pacific owns substantially all the stock of Oregon Short Line. Oregon Short Line owns part of stock of Oregon Railroad and Navigation Company. Union Pacific controls the lines by ownership of stock from Council Bluffs and Kansas City to Portland. Southern Pacific, Union Pacific, the Short Line, and the Navigation Company all have the same president, Mr. E. H. Harriman; same vice-president, W. D. Cornish, but there are other vice-presidents. Witness is secretary or assistant secretary of them all. J. C. Stubbs is Traffic Director of all. They have the same assistant traffic managers, the same comptroller, the same general auditor, the same director of maintenance and operation, the same director of purchases, the same general counsel. (7) Identifies lists of directors of Union Pacific and Southern Pacific for 1900 to 1906, inclusive; also lists of executive committee of Union Pacific from 1900 to 1906, inclusive; also executive committee of Southern Pacific, O. S. L. and O. R. & N. during same period. (Complainant's Exhibit 1, pages 8 to 16 inclusive.)

Directors and Officers of U. P. and S. P. Lines.

(17) Prior to acquisition of Southern Pacific stock by Union Pacific, there were no directors in the Southern Pacific who were also directors in the Union Pacific. Stock of Southern Pacific was acquired by Union Pacific in spring of 1901. Witness identifies statement showing date of annual meetings of the Southern Pacific Company, the number of shares of stock voted, the number of shares owned by the Union Pacific or the Short Line. (Complainant's Exhibit 2, pages 18 and 19.) Statement shows that the majority of the stock present at each meeting of the Southern Pacific Company was voted by the Union Pacific or Oregon Short Line Company in person through its officers or by proxy.

Annual Meetings of S. P.

(20) Witness testifies as to personnel of directors, showing that some of the directors of the Southern Pacific are employees or connected with the Union Pacific.

(21) Identifies by-laws of the Pacific Companies. (Exhibits 3 to 9, inclusive, pages 21 to 50, inclusive.)

(51) Testifies as to method of sending for proxies. Exhibits 10 to 15 inclusive, pages 52 to 55, are forms of proxy sent out by Southern Pacific for years 1900 to 1905, respectively, with exception of year 1901.

Proxies for S. P. Meetings.

(56) All four Pacific Companies have offices at 120 Broadway, New York. The secretary's, comptroller's, president's and vice-president's, and counsel's office are all common. A majority of the persons designated in proxies to vote Southern Pacific stock are Union Pacific officials or employees. It is difficult to obtain full vote of the stockholders. Only companies in which it is possible to do so are those where stock is all owned by the Union Pacific.

Offices of Pacific Cos.

(57) Stock in Southern Pacific Company represented at meetings is as follows: Meeting of 1900, out of 1,884,000 shares, 1,859,000 shares were voted. In 1901 out of 1,978,000 shares, 1,736,000

Shares voted at S. P. Meetings.

shares were voted. Second meeting, same year, 1,742,000 shares were voted. In 1902, 1,573,000 shares were voted, and up to 1904 about the same number of shares. In 1905, after an increase of the capital stock, 1,974,000 shares were voted, and in 1906, a little over 2,000,000 shares. Reads Resolution of Union Pacific Executive Committee designating directors to be voted for in the Southern Pacific. Executive Committee is composed of five directors and has the power of the board when the board is not in session.

Resolutions for purchase of O. S. L. and O. R. & N. securities and S. P. stock.

(58) Mr. Harriman is Chairman of the Executive Committee of all the companies. Exhibit 16, pages 58 to 63, Resolution of Union Pacific Directors of August 29th, 1899, providing for the acquisition of Oregon Short Line and Oregon Railroad and Navigation Company securities.

(63) Witness states that resolution provides for the acquisition of the Income A Bonds and the Income B Bonds of the O. S. L., and a part of the preferred and common stock of the Navigation Company. Exhibit 17, pages 63 to 72, Resolution of Board of Union Pacific Directors, dated February 20th, 1901, providing for the acquisition of Southern Pacific stock.

Jan. 31, 1901, provision for financial requirements.

(72) Exhibit 18, Resolution of Directors, Union Pacific Co., adopted January 31st, 1901, confers power upon Executive Committee to make provision for present and future financial requirements of the company, including provisions for financing acquisition, now or hereafter contemplated, of securities of any other company or companies, etc. It authorizes the issue of bonds and obligations of the company in an amount not exceeding $100,000,000.00.

Equipment Ass'n and Pac. Fruit Express.

(74) Exhibit 19, Resolution of Executive Committee, Union Pacific Co., in regard to organization of Equipment Association, adopted December 13th, 1906. (75) Exhibit 20, Resolution of Executive Committee, Union Pacific Co., as to organization of Pacific Fruit Express Co., adopted December 13, 1906. (76) Exhibit 21, Resolution of Executive Committee, Oregon Short Line Co., adopted March 13th, 1903, authorizing the Chairman to sell Southern Pacific stock at not less than cost.

O. S. L. purchase of S. P. stock.

(77) Exhibit 22. Resolution of Executive Committee, Oregon Short Line, adopted March 11th, 1903, providing for purchase of 900,000 shares of stock of the Southern Pacific Company, from Union Pacific Company, for the price of $55,428,183.38. In partial payment therefor Union Pacific to accept at their par value, 162,814 shares of the common stock of O. R. & N., the balance to be paid by the issue to Union Pacific of obligations of the O. S. L. bearing four per cent, payable on demand.

Sale of S. P. stock to Wm. Rockefeller.

(78) Exhibit 23. Resolution Directors Oregon Short Line, adopted November 12th, 1903, in regard to sale of 300,000 shares of Southern Pacific stock to Mr. Wm. Rockefeller. (79) Exhibit 24, Resolution of Executive Committee, Union Pacific, adopted March 11th, 1903, relating to release of Southern Pa-

cific stock from First Lien Mortgage. (80) Exhibit 25, Resolution of Executive Committee, Union Pacific, adopted March 11th, 1903, relating to release of Southern Pacific stock from First Lien Mortgage.

Sale of securities by U. P. to O. S. L.

(81) Exhibit 26, Resolution of Directors, Union Pacific Co., adopted February 26th, 1902, relating to sale of stocks to Oregon Short Line, being the stocks of the Southern Pacific Company, common and preferred stock of O. R. & N., stock of Occidental and Oriental Steamship Co., Ogden Union Depot & Ry. Co., Pacific Express Co., Union Pacific Coal Co. (82) Exhibit 27, Resolution of Executive Committee, U. P., adopted March 11th, 1903, relating to sale of Southern Pacific stock to O. S. L. (83) Exhibit 28, Resolution of Executive Committee, U. P., adopted March 11th, 1903, relating to release of O. R. & N. stock from Short Line Income B Mortgage. (84) Exhibit 29, Resolution of Executive Committee of Union Pacific Co., adopted July 17th, 1902, relating to correspondence with Kuhn, Loeb & Co. in re Oregon Short Line Participating Bonds.

San Pedro agreements and conveyances.

(86) Exhibit 30, Resolution of stockholders O. S. L. of October 14th, 1903, approving San Pedro agreements, conveyances, etc. (109) Exhibit 31, Stock Trust Agreement between Wm. A. Clark, E. H. Harriman, and the Farmers' Loan and Trust Company. (122) Exhibit 32, Traffic Agreement between O. S L., San Pedro, and U. P. (137) Exhibit 33, Traffic Agreement between Southern Pacific and San Pedro. (140) Exhibit 34, Deed from O. S. L. to San Pedro Co., covering Leamington Cut-off. (143) Exhibit 35, Guaranty of U. P. to release lien of present and future holdings of Income A or Income B Bonds, being an agreement between O. S. L. Co., San Pedro Co. and Union Pacific.

(145) Exhibit 36, Lease from Southern Pacific Co. to San Pedro Co., covering railroad property between Riverside and San Bernardino. (155) Exhibit 37, Deed from O. S. L. Co. to San Pedro Co., covering O. S. L. lines south of Salt Lake City. (162) Exhibit 38, Deed from O. S. L. to San Pedro, covering Terminus Branch. (165) Exhibit 39, Salt Lake Yard Contract between O. S. L. and San Pedro Co. (182) Exhibit 40, Deed from Utah and Pacific R. R. Co. to San Pedro Co. (185) Exhibit 41, Deed from Utah, Nevada and California R. R. Co. to San Pedro Co. (187) Exhibit 42, Deed from New East Tintic Ry. Co. to San Pedro Co.

Pac. Mail, officers, etc.

(189) Officers of Pacific Mail Steamship Company, elected June 22, 1905,—latest at hand; E. H. Harriman, President; R. P. Schwerin, Vice-President and General Manager; William Mahl, Comptroller; H. S. Bradt, Assistant Comptroller; Alex. Millar, Secretary; Joseph Hellen, Assistant Secretary. (190) Erastus Young, General Auditor. Board of Directors,—Maxwell Evarts, George J. Gould, E. H. Harriman, George H. Macey, Ogden Mills,

Russell Sage, R. P. Schwerin, James Speyer, and Paul M. Warburg. Recollection is that Mr. Speyer and Mr. Warburg have resigned, and vacancies have not been filled. Vacancy caused by death of Mr. Sage has not been filled.

S. P. Co. owns a small amount over half the stock of the Pacific Mail S. S. Co. The general officers are president and auditor and comptroller; they are the same as U. P. Its financial transactions are under charge of Wm. Mahl and Erastus Young is general auditor. Does not think Mr. Stubbs has jurisdiction over traffic matters of that company. Officers of Portland & Asiatic S. S. Co. are as follows: E. H. Harriman, Chairman of Board and President; Wm. D. Cornish, Vice President; R. P. Schwerin, V. P. & Gen. Mgr.; W. R. Litzenburg, Sec'y; F. V. S. Crosby, Treasurer; E. Young, General Auditor; H. E. A. Railton, Auditor, Mr. Crosby, Treasurer, is also treasurer of U. P. and O. S. L. He has no connection with the S. P. Co.

O. and O. S. S. Co.

(191) Union Pacific owns one-half the stock of the Occidental and Oriental S. S. Co. S. P. Co. and individuals own the other half. S. P. and U. P. jointly own control of the O. & O. S. S. Co. The officials of the O. & O. S. S. Co. are as follows: R. P. Schwerin, President; W. F. Herrin, Vice President; D. D. Stubbs, Sec'y & Genl. Manager. Mr. Herrin is Counsel for the S. P. Co., living at San Francisco. Mr. Schwerin is General Manager of the Pacific Mail S. S. Co.

(192) The minority shareholders of the Pacific Mail are widely scattered. All these steamship lines, including Portland & Asiatic, run between Pacific ports and points in the Orient and are engaged in the transportation of traffic in connection with various Pacific railroads. S. P. Co. owns practically all of the stock of the Morgan S. S. Line.

Morgan Co.

Mr. Lovett states that the Morgan Company is a Louisiana company which formerly owned the steamship line between New Orleans and New York and owns a railroad extending from New Orleans to Lafayette, La., a part of the main trans-continental line. It does not now own any steamship plying between New York and New Orleans. They are owned by the S. P. Co. The Morgan Line owns only railroads and a few small river boats perhaps. The facts are that as these old ships which the Morgan company owned at the time the S. P. Co. bought its stock, many years ago, passed out of service and were replaced by new ships, the new ships were owned by the S. P. Co., and all of the old boats, I believe, are out of service and it is still known as the Morgan Line of steamers, but they are owned by the S. P. Co. There are boats plying between New Orleans and Havana which are owned either by the S. P. Co. or the Morgan Company.

Relations of S. P. to Texas and Louisiana lines.

(193) Mr. Lovett states that for many years, at least since 1897, the Southern Pacific has in connection with the lines of which the stock was owned by the Southern Pacific, a line of steamships ex-

tending from New Orleans to New York. That the S. P. Co. does not itself operate any lines in Louisiana or Texas or east of El Paso. The lines west of El Paso are operated by the S. P. Co. under a lease. The lines in Louisiana and Texas, known as Southern Pacific Lines, are not operated by that company, but practically all of the stock of the corporations owning the railroads is owned by the S. P. Co., but the business is conducted by those corporations in their own names, the Southern Pacific, of course, owning the stock.

San Pedro contract.

Resolution of Aug. 11, 1902, of O. S. L. Executive Committee, approving preliminary contract between Clark, Trustee, and E. H. Harriman, Trustee, of July 9, 1902, relating to San Pedro road. (194) Exhibit 43, Resolution of Executive Committee of Oregon Short Line Company of Aug. 18, 1904, relating to subscription to Southern Pacific preferred stock.

(195) Exhibit 44, Resolution of the Executive Committee of O. S. L., passed Mar. 9, 1905, relating to purchase of O. R. & N. Co. stock. Witness believes that purchase provided for in foregoing resolution was carried out.

Pensions—Authority to borrow money.

(196) Exhibit 45, Pension Rules covering pension system, U. P. Co. taking effect January 1, 1903. (204) Exhibit 46, Amendment to Pension Rules. Resolution of Executive Committee U. P., dated July 26, 1906, (205) empowering Mr. Harriman to borrow money, to pledge the securities of the company as collateral. This resolution was amendatory to one passed on Dec. 31, 1902, the object of it being to permit the Chairman to pledge securities at the same time he executed notes. (206) Original resolution of Dec. 31, 1902, authorizing the Chairman to borrow money, read in evidence.

Traffic headquarters in Chicago.

Resolution of Executive Committee of U. P., May 8, 1901, with reference to the purchase by the Chairman of certain securities from Kuhn, Loeb & Co., and approving the same. (207) Resolution of Executive Committee of U. P. Co., dated June 6, 1901, approving arrangements made by Chairman for the establishment of traffic headquarters of the U. P., S. P., O. S. L. and O. R. & N. Companies in Chicago. Resolution of Executive Committee of U. P., dated Oct. 23, 1902, ratifying action of Chairman in negotiating agreement between U. P., S. P., O. S. L. and O. R. & N. Cos. of the first part and the C. & N. W. of the second part, dated Oct. 22. 1902, covering formation of through lines of transportation via Omaha.

Northwestern contract.

R. S. Lovett, Counsel.

Resolution of Executive Committee of U. P. Co., Mar. 19, 1903, ratifying action of Chairman in borrowing money for the company and loaning money to the S. P., C. & A., Kansas City & Southern, and Union Depot Co. of Denver. (208) Resolution of U. P. Executive Committee, dated Feb. 18, 1904, ratifying Chairman's appointment of R. S. Lovett, Counsel, Union Pacific and Southern Pacific Companies, and allied lines. Resolution of Executive Committee of U. P. Co., June 9, 1904, ratifying action of Chairman

in making lease for offices of Director of Maintenance and Operation in Chicago.

Meeting of Executive Committee Apr. 7, 1905, Chairman submits letter of George J. Gould, April *26*, 1905, in regard to his resignation as director of Harriman Lines. (209) Meeting of Executive Committee, July 20, 1905, letter from J. C. Stubbs submitted in regard to advertising for joint lines. (210) The letter is Exhibit 47. (211) Exhibits 48 to 54, inclusive, are copies of requests for proxies under the stock trust agreement between W. A. Clark and E. H. Harriman, heretofore marked Exhibit 31. (215) Resolution of directors of S. P. Co., June 8, 1904, appointing J. C. Stubbs, Vice-President, headquarters at Chicago, J. Kruttschnitt, Vice-Pres't, with headquarters at Chicago.

J. C. Stubbs and J. Kruttschnitt, Vice Pres'ts.

(216) Meeting of Executive Committee of O. S. L., Mar. 31, 1903, ratifying sale of 300,000 shares of S. P. stock at 57½. There was no previous resolution on the part of the Board, stockholders or the Executive Committee of the O. S. L. for sale of that stock. Stock was bought back on Nov. 12, 1903. Meeting of directors of O. S. L., Nov. 12, 1903, ratifies action of Chairman in repurchasing this stock.

Sale and repurchase of 300,000 shares S. P. stock.

(217) Exhibit 55, letter from William Rockefeller to Mr. Harriman, dated Nov. 5, 1903, in regard to purchase of 300,000 shares of S. P. stock. (218) Witness remembers delivering the stock and getting the check. It was bought back the following November. Resolution of Executive Committee, O. S. L., Mar. 26, 1903. Chairman reports purchase of two steamships from Atlantic Transport Co. for $2,200,000.00 each. Action of Chairman ratified. Meeting of Executive Committee, O. S. L., Apr. 6, 1903, execution of proxies on stock owned by company ratified. (219) Action of Executive Committee of S. P. Co. June 30, 1901, ratifying establishment of traffic headquarters at Chicago in charge of J. C. Stubbs. Letter of Mr. Harriman to Mr. Hays, President, S. P. Co. with respect thereto, dated June 18, 1901. Meeting of Executive Committee, S. P. Co., July 18, 1901, report of Mr. Tweed, Chairman of Board, in regard to correspondence between himself and President Hays in relation to the appointment of officers by the President, etc. Action of the chairman of the board of directors approved. (220) Witness is under impression that eastern officers were unable to agree with Mr. Hays as to the organization in San Francisco. Mr. Tweed was then Chairman of the Board,and Mr. Harriman, Chairman of the Executive Committee.

Disagreement with Pres't Hays.

Meeting of Executive Committee S. P. Co., Nov. 27, 1901, fixing duties of Wm. Mahl, Comptroller, and providing for appointment of Assistant Comptroller. H. S. Bradt, appointed to fill the position. Erastus Young appointed General Auditor. (221) Meeting of Executive Committee, S. P. Co., June 9, 1904, ratifying lease of floor space for the office of Mr. Kruttschnitt in Chicago. Meeting of Executive Committee, S. P. Co., Mar. 1, 1906, ratifying

Wm. Mahl, Comptroller.

Chairman's action in regard to advertising. Meeting of July 23, 1906, authorizing purchase of the Coos Bay, Roseberg and Eastern R. R. & Navigation Co.

(222) Meeting of Executive Committee, S. P. Co., Oct. 25, 1906, chairman submitted letter from Mr. Stubbs in regard to advertising. Expenditure approved. Meeting of Board of Directors, U. P. Co., Jan'y 7, 1904, proposed amendment of Section 1, Article 6, of By-Laws of U. P. R. R. Co., relating to duties of the President, and authorizing offices of President and Chairman of Executive Committee to be held by the same person. Amendment adopted by directors on April 11, 1905. (223) Meeting of Aug. 15, 1906, of U. P. Co. in relation to semi-annual dividends of $5.00 per share on common stock and statement with reference to deferring announcement.

U. P. 5 per cent semi-annual dividend.

(224) Meeting of the Executive Committee, U. P. Co., Aug. 16, 1906, resolution in respect to dividends. S. P. Co. Directors' meeting Aug. 15, 1906, resolution in regard to dividends. (225) Statement of chairman in regard to deferring announcement of dividend. Directors present at meeting of Aug. 15, 1906. (226) Directors present at board meeting of U. P. Co. of Aug. 15, 1906. Testimony as to notice usually given of a meeting of directors. Meeting of Executive Committee of S. P. Co., Aug. 16, 1906, authorizing Secretary to notify Secretary of New York Stock Exchange on the 17th of the declaration of dividends, etc.

(227) Meetings of Executive Committee usually fixed by adjournment, occasionally by call, but always by notice. Actual notice of meetings is all that is required by by-laws. (228) Meeting of Executive Committee of U. P. Co., Dec. 13, 1906. Action of Chairman in terminating contracts with the Armour Car Lines, organization of Pacific Fruit Express Co. and purchase of 6,000 refrigerator cars, ratified and approved. (229) Meeting of Executive Committee of U. P., Dec. 13, 1906, action of Chairman in regard to organization of the Equipment Association approved.

Termination Armour contract—Pac. Fruit Exp.

(230) WILLIAM MAHL.

Mahl.

Testimony given before Interstate Commerce Commission, Jan. 4th, 1907, in the city of New York.

Comptroller, U. P. R. R. Co., So. Pac. Co., O. S. L. and O. R. & N. Co. (231) Pacific Mail S. S. Co.; no connection with the Occidental & Oriental S. S. Co. or any other steamship line. As Comptroller of U. P. jurisdiction extends over matters in New York office, payment of monies, keeping of accounts of monies received and disbursements. Includes monies received from sales of stocks and bonds. Disbursements relating to same matters. Same testimony applies to other companies of which he is Comptroller so far as they are made in New York. Mr. Young, General Auditor, reports a summary of the operations of the companies he is general auditor of. Mr. Young has entire jurisdic-

Comptroller, Harriman Lines.

Jurisdiction.

tion of the Accounting Department. Each of the four companies has an auditor of its own.

S. P. controls majority stock Pac. Mail S. S. Co.

(232) Out of $20,000,000.00 capital stock of the Pacific Mail the S. P. Co. controls $10,010,000.00, a fraction over half. Southern Pacific owns steamship line between New York, Galveston and New Orleans. U. P. owns the steamers "Aragonia" and "Numantia." U. P. has stock in the O. & O. Co. (233) The O. R. & N. Co. is a river line and owns no steamships. (234) Exhibits 56 and 57 being statements showing common and preferred capital stock of Union Pacific R. R. Co. authorized, issued and outstanding Dec. 31, 1906, and also showing purposes for which stock was issued or was to be issued.

O. S. L. dividend.

(235) O. S. L. this fall declared a dividend of 50 per cent, the accumulation for a number of years. That was a surplus from transportation operation, not from the sale of securities. Witness receives reports direct from the officers of the Texas and New Orleans Railroad, not from Mr. Young,—and the Pacific Mail. There is an auditor of the Pacific Mail in San Francisco, and he reports to Mr. Young. He also sends reports to witness. His name is Railton.

Auditors who report to witness.

(236) Mr. W. C. Parker is Auditor of steamers running from New York to Galveston, with office in New York, and makes reports to witness and also to Mr. Young. O. & O. S. S. Co. sent monthly financial statements to witness. Mr. Sterling is Auditor of O. R. & N. at Portland. Sends reports to witness once a month. C. J. McNitt is Auditor of O. S. L. at Salt Lake. He sends statements to witness and reports directly to Mr. Young. Witness also gets reports from Mr. Young in regard to Union Pacific.

Salary expense apportioned.

(237) The salaries of Traffic Director, Director of Purchases, Secretary and Comptroller, are paid in New York. Expenses of office of Director of Purchases is apportioned among the different companies in proportion to the number of locomotives and cars owned by them; that includes the S. P., U. P., O. S. L., and O. R. & N. Expenses of transfer office allotted actually to the various companies as near as can be ascertained. Salaries and expenses in New York, including salaries of J. C. Stubbs, E. O. McCormick, P. C. Stohr, and H. B. Thrall, allotted on basis of gross transportation receipts.

(238) Witness was employed by Mr. Harriman. (239) In apportioning salaries, usual custom among railroads generally is followed. Witness thinks that the salaries of other employees than himself, where they were common all over the system, were apportioned through Mr. Young, or rather upon conference with the latter, or following the practice which was followed out on the line in similar instances. In making these divisions separate charges are made against the steamship lines. (240) One or the other of the companies in the first instance pays these various salaries, and then a charge is made against the other companies for their proportions.

(241) In making up statement for use of Board prior to declaration of 5 per cent semi-annual dividend, there were included the operations of the railroad as well as the income from investments. The statement does not show the money which might be made by buying stocks or bonds at a certain figure and selling them afterwards at a higher figure, but only the dividends or interest received. (242) Mr. Lovett states that if any profits on the sale of securities were included, they will appear from the statement, and that the statement will be produced; that as a matter of fact it shows only the income from transportation business and the income from investments.

Statement used as basis for 5 per cent dividend.

(243) Dividends on stock of the O. S. L. or O. R. & N. go into the treasury of the U. P., and are used to pay the dividends of that company. (244) Testimony as to statement showing profits on investments in securities. (245) As the securities have not all been disposed of, there would be no statement showing the profit and loss on the transaction, as it is impossible to tell what the remaining securities would be sold for.

Disposition of O. S. L. and O. R. & N. dividends.

(246) Exhibit 5—Mahl,—Statement showing holdings of Portland and Asiatic S. S. Co. stock; 993 shares in the name of E. H. Harriman, Chairman, one share each in the names of seven other persons.

(247) Exhibit 6—Mahl,—Statement showing names of persons in whom there is registered the Southern Pacific common and preferred stock that belongs to the O. S. L., aggregating 900,000 shares of common and 180,000 shares of preferred. Exhibits 5 and 6,—Mahl,—are marked Exhibits 58 and 59. (248) All the foregoing stock is under a mortgage of the O. S. L., the Equitable Trust Co., Trustee. (249) Names other stocks under the same mortgage, issued to secure $100,000,000.00 of bonds. Part of the said bond issue was used to retire the $82,000,000.00 of participating bonds outstanding. Exhibit 60, Balance sheet of U. P. R. R. Co. found in annual report of 1906.

Holders of S. P. stock belonging to O. S. L.

(250) The profit and loss balance of this statement does not show profits made in buying and selling stocks and securities. (251) Discusses details of profit and loss account contained in foregoing statement. Exhibit 61,—being statement submitted to the Board of Directors of U. P. at their meeting August 15th, 1906, at the time they voted the 5 per cent dividend. (252) The surplus of $30,317,769.44, shown in the statement is one arising from operation. (253) Discussion of the foregoing statement. (254) Further discussion of the foregoing statement. (255) Further discussion of the statement.

June 30, 1906, the O. S. L. owned $108,000,000.00 of S. P. stock, $90,000,000.00 common and $18,000,000.00 preferred.

Am't of S. P. stock owned by O. S. L.

(256) Exhibit 62,—being a statement of purchase and sale of the Northern Securities Co. stock, and the substituted stock of Northern Pacific and Great Northern. (257) Exhibit 63, Northern Pacific Purchase Money Certificates. (258) Exhibit 64, Meet-

Northern Securities Co. stock.

ing of Board of Directors, U. P. Co., Jan. 31, 1901, at which provision was made for financial requirements. (259) Same.

U. P. and O. S. L. finances and stock sales.

(260) Exhibit 65,—Meeting of Executive Committee, U. P. Co., March 19, 1903.—Chairman submitted a statement showing amounts loaned and amounts borrowed, and the action of the Chairman was approved. (261) Exhibit 66, being a statement of the dates and amounts received from sale of U. P. First Lien Convertible 4 per cent Gold Bonds. (262) Same. (263) Exhibit 67, being condensed statement of operations of U. P. System, five months ending Nov. 30, 1901. (264) Exhibit 68, Statement of stocks deposited March 9, 1905, with Equitable Trust Co. under Collateral Trust Mortgage of O. S. L. (264) Exhibit 69, condensed statement of operations of O. S. L. from July 1, 1897, to June 30, 1906. (265) Exhibit 70, statement showing issue and sale of 4 per cent and participating bonds of O. S. L. Exhibit 71, statement showing sale of 4 per cent refunding bonds of the O. S. L. (266) Exhibit 72, showing operating surplus at the time the $100,000,000.00 stock issue was authorized, showing resources from Feb. 28, 1901, when stock issue was authorized, to June 30, 1901, and how applied. (267) Same. The amendment to resolution authorizing Mr. Harriman to borrow money, and in addition thereto to pledge collateral, was not passed at Mr. Harriman's solicitation, or with his knowledge. It was done at the request of witness, because certain banks wanted the chairman to have that authority.

Reason for resolution authorizing Mr. Harriman to pledge collateral.

(268) Similar resolution was passed by the U. P., S. P. and O. S. L to meet the situation arising in connection with the ordinary financial transactions of the company. A similar resolution of the S. P. Co. at the time Mr. Huntington was president was passed, viz. Jan. 26, 1900. (269) Such resolutions are customary. Monthly statements of the earnings of railroads of Pacific Companies are sent to the stockholders. The S. P. Co. for some months before the making of that dividend furnished no monthly statements.

Cornish.

(270) WM. D. CORNISH.

Testimony given before Interstate Commerce Commission, Jan. 4th, 1907, in the city of New York.

Vice Pres't, Harriman Lines.

Vice President U. P., O. S. L., O. R. & N. and S. P. Companies, and a director of the San Pedro Co. A director of all the companies mentioned. Prior to acquisition of stock of the S. P. Co., the U. P. controlled by stock ownership both the O. S. L. and O. R. & N. Companies. In a general way the lines of the O. S. L. extend from Granger on the east to Huntington on the west and from Salt Lake on the south, north to Silver Bow. It also owned and controlled the various lines south of Salt Lake, and southwest.

How lines are operated.

(271) The O. S. L. or U. P. prior to acquisition of S. P. stock in 1901 controlled the Navigation Co. Since that time the U. P. got substantially all the stock of both companies. The separate

companies operate their own property. Mr. Bancroft operates all of the Short Line, and that part of the U. P. west of Green River. Manager of the O. R. & N. operates that road and the lines of the S. P. in Oregon north of Ashland.

S S. Lines.

(272) S. P. owns a slight majority of the stock of the Pacific Mail, but witness thinks that S. P. owns no stock of O. & O. S. S. Co. Pacific Mail operates steamers from San Francisco to Japan and China. They stop on some trips at the Sandwich Islands. They operate from San Francisco to Panama. The stock of the Portland and Asiatic belongs to the Navigation Co. Its ships run from Portland to the Orient. U. P. has a through line of railway and steamships through its stock ownership from Council Bluffs and Kansas City to ports in the Orient via Portland. S. P. has a through line of transportation from New York via S. P. and San Francisco to the Orient by steamship and rail through its control of the Pacific Mail.

Controversy with San Pedro Co.

(273) Senator Clark undertook construction of the San Pedro road in 1901. The San Pedro Co. under present organization was operating a small piece of road in California. Another corporation started a controversy in regard to a grade in Nevada with the Short Line. It was a company the San Pedro controlled. That controversy went into court. The Short Line won and it was permitted to hold the grade theretofore constructed by it. The Short Line had projected a road substantially along the same line through Nevada as far as Calientes, that the San Pedro afterwards built on, about 40 miles being through a canyon. There was not 200 feet right of way for each of the two railroads, but there was room in it for more than one railroad. There were five tunnels on the route, and there was a contest for the location. There was another route over the hills.

Settlement of controversy.

(274) Testifies as to details of the settlement of the controversy. The contract of settlement contemplated a line from Salt Lake to Los Angeles and to San Pedro and Pasadena. W. A. Clark is President of the San Pedro Line, W. H. Bancroft is Vice-President. (275) J. Ross Clark is a brother of Senator Clark, and he is Second Vice-President. R. E. Wells is General Manager. Mr. Wells came from the Santa Fe. Directors of the San Pedro Line are Senator W. A. Clark, J. Ross Clark and E. H. Harriman.

Directors elected in 1906 were W. H. Bancroft, H. I. Bettis, W. D. Cornish, E. H. Harriman and W. R. Kelly. Testimony as to the relation of these directors to the U. P. (276) W. G. Kerckhoff is a citizen of Los Angeles, not connected with the S. P. or U. P.; R. C. Kerns, of St. Louis; Thomas Kerns, of Salt Lake; T. F. Miller, of Los Angeles; W. H. Comstock, Secretary of the company.

Pac. Exp. Co.

The Pacific Express Co. operates over the Gould Lines and the U. P. Lines. U. P. owns 40 per cent, Wabash 20 per cent, Mo. Pac. 40 per cent, S. P. owns none. Mar. 23, 1901, U. P. was authorized to issue one hundred millions of common stock. About that time $100,000,000.00 of convertible bonds were issued by the

U. P. convertible bonds.

U. P. The bonds were convertible into the common stock, and they have been so converted with the exception of $500,000.00.

Acquisition of N. P. stock by U. P.

(277) About that time the U. P. acquired a majority of the stock, preferred and common, of the Northern Pacific. The $100,000,000.00 of convertible bonds was not issued primarily to enable the U. P. to buy such stocks. It was not the real purpose. The money all went into the treasury, and money to buy the stocks must have been taken out of the treasury, but witness' recollection is that it was not issued primarily for that purpose. Witness states that the Northern Pacific purchase had nothing to do with the issue of the bonds. It was something that came a little later.

Purpose of U. P. bonds.

(278) According to the circular relating to the issue of Union Pacific stock and bonds above referred to forty millions of bonds were to be used to purchase S. P. stock.

(279) Company heavily in debt on account of purchases of road and betterments. They had not been financed, and the purchase of the S. P. being in contemplation the $100,000,000.00 bond issue and corresponding issue of stocks was authorized for those purposes. Exhibit 73, circular dated Feb. 13, 1901, relating to First Lien Convertible 4 Per Cent. Gold Bonds.

Completion of San Pedro.

(281) The San Pedro Line was completed about May, 1905. Distance from Salt Lake to Los Angeles about 780 miles. It is less than from Salt Lake to San Francisco.

Traffic agreement between S. P. and San Pedro.

(282) Refers to provision in traffic agreement between San Pedro and S. P. Companies, covering rates for local business which might be the subject of competition between those two companies. The territorial region contemplated is all in Southern California below Mojave, practically confined to the lines from San Pedro, Los Angeles, and Pasadena, and then from there over to San Bernardino. That is the practical interpretation which witness has always given to that clause. Reasons for this interpretation.

(283) Same.

Santa Fe runs over S. P. Lines from Mojave to Needles. San Pedro leases trackage from the Santa Fe, from a point between Colton and San Bernardino, over to Daggett. Mr. Kellogg urges that all the business over the San Pedro from Los Angeles to Salt Lake is local. Witness calls it through. Moreover the traffic contract between the San Pedro and S. P. Cos. refers to local business that is competitive, and the S. P. Co. has no business to Salt Lake.

Thorne.

(284) W. V. S. THORNE.

Testimony given before Interstate Commerce Commission, Jan. 4th, 1907, in the city of New York.

Director of purchases, Harriman lines.

Residence New York City. Director of Purchases of U. P., O. S. L., O. R. & N., and S. P. Purchases locomotives, cars, rails, bridges and other material which the companies use in large quantities, and where it is advantageous to make an agreement direct with the manufacturer, where the companies can concentrate their business with one manufacturer. There are local purchasing

agents for the U. P., O. S. L., O. R. & N., S. P. and Morgan's Co.; Pacific Mail Steamship Co. not under his jurisdiction. He sometimes reserves the option to obtain quantities for the Pacific Mail S. S. Co., which that company can take advantage of if it desires.

Distribution of equipment and supplies.

(285) Contracts for supplies usually made in name of Union Pacific. Later they are distributed among the various lines as directed by Mr. Kruttschnitt. (286) For instance, witness will give an order for 250 locomotives. When they are completed, or a substantial number completed, Mr. Kruttschnitt determines how many he will send to one line or another, and then he makes up, signing on behalf of the Southern Pacific or Union Pacific, as the case may be, a requisition for so many locomotives. These requisitions are sent to Mr. Harriman, who is Chairman of Executive Committee of all the lines, and they are voted on by the Executive Committee of the particular line to which the requisition is referred. Other supplies are handled in substantially the same way.

Estimates.

(287) The requirements of the different lines are made out by Mr. Kruttschnitt. Witness is notified of these estimates, and contracts are made accordingly. As to small articles, such as car wheels, car couplers, axles, etc., witness contracts with manufacturer for all that may be needed for any part of system, and then notifies local purchasing agents, who call on the manufacturer for deliveries as needed. (288) Purchases of lumber are made by the local purchasing agent. Witness appointed Purchasing Agent by Mr. Harriman. Appointed for the various lines at the same time. His position was created after acquisition of Southern Pacific stock by Union Pacific. Has his office in New York. Gets his pay check from the Treasurer of the Union Pacific, but does not know how his salary is distributed between the various companies.

(290) J. C. STUBBS.

Stubbs.

Testimony given before Interstate Commerce Commission, January 9th, 1907, in the city of Chicago.

Traffic director, Harriman lines.

Witness is Traffic Director of Union Pacific R. R. Co., Oregon Short Line R. R. Co., Oregon Railroad & Navigation Co., and Southern Pacific Co. Not of Pacific Mail. His jurisdiction extends over the Morgan Lines from New York. (291) Jurisdiction does not include Texas Lines, except as to traffic passing entirely through the state. Witness was formerly Vice-President in charge of traffic of Southern Pacific System. Until his death, Mr. Huntington was the head of the Southern Pacific System. After his death Mr. Hayes was elected President. Mr. Huntington during his life, and his estate after his death, from 1870 until the sale of the stock to the Union Pacific, dominated the Southern Pacific System. That system then included the rail lines from Portland through San Francisco to New Orleans and the line from San Francisco to Ogden; also the steamship lines from New Orleans and Galveston to New York.

S. P. system.

Relations of S. P. and U. P. to Pac. Mail and other S. S. lines.

(292) Witness understood that at the time of Mr. Huntington's death the Southern Pacific Company, or the people that controlled the Southern Pacific Company, held a majority of the stock of the Pacific Mail Steamship Company. That line had boats running from San Francisco to the Orient and to Panama and coast-wise in connection with the Panama Railroad. It controlled with the Union Pacific, the Occidental and Oriental S. S. Co., which was a line that operated between San Francisco and Asiatic ports. Understanding of witness is that the stock of that company was equally divided between the individuals controlling the Southern Pacific, and the Union Pacific Company, but could not be accurate as to that. The Union Pacific during those days owned a line of railroad from Council Bluffs to Denver, Cheyenne, Ogden and Portland. Understands that they operated a line of steamships between San Francisco and Portland, and that they had various steamboat lines on the Willamette and Columbia Rivers. They established, or there was established, a line of steamships between Portland and Oriental ports, first, he thought by outside parties.

Portland and Asiatic S. S. Co.

(293) "Q. Dodwell people? A. Dodwell people, but I don't know but what another man intervened later. However, at the time I went there the Portland and Asiatic Steamship Company was organized and controlled by the Oregon Railroad and Navigation. Q. At the time you went there—you mean the time you became connected with the Union Pacific? A. Yes sir. Q. And prior to that time either private interests owned a line in connection with the Oregon Railroad and Navigation Company, or the Oregon Railroad and Navigation Company owned the Portland and Asiatic Steamship Line, which operated to Asiatic ports? A. I think so."

Lines owned by U. P.

The Oregon Railroad and Navigation Company was a part of the Union Pacific and controlled by it. The Union Pacific owned the stock and controlled in that way the Short Line and the Oregon Railroad and Navigation Company. In connection with those lines from Portland, there was a steamship line running to San Francisco and a steamship line running from Portland to Asiatic ports. The Southern Pacific had a rail line from Portland to San Francisco.

Prior to March, 1901, witness was the vice-president in charge of traffic of the Southern Pacific System and familiar with its business for many years.

Sunset territory

(294) From a line somewhat east of Pittsburgh, Buffalo and Wheeling, business from the Atlantic coast to Pacific coast points moved via the Morgan Line and Southern Pacific R. R., (Sunset Route). No tariffs via that route were published between Pittsburgh and Pacific coast points. Business also moved that way from above points to the Orient, but not from the Orient to Atlantic seaboard points. Business from Pacific coast points moved that way to Atlantic seaboard points, but not, witness thought, from as far north as Portland, though some hops moved that way from the Willamette Valley.

(295) Business moved westward for Portland via that line in small quantities, but not for Seattle and Tacoma. The rates from that eastern territory are the same via the Morgan Line and the Sunset Route as they are via the all rail lines on substantially all traffic. On business west of Pittsburg and the territory between there and the Missouri River, the rates are the same via New Orleans and Texas points over the Southern Pacific as they are via Ogden or other gateways to the Pacific coast. Rates same via different routes.

(296) Above statement true as to Omaha and Kansas City via El Paso to California points. Witness thought the same true as to passenger tourist business; as to freight rates, thinks rates from Missouri River points are the same by either route; from New Orleans north and from Missouri River points are the same, from Kansas City north. Galveston and Houston are practically the same as Kansas City. Chicago a little higher. In a large measure the rates to California are blanket from nearly all this eastern territory.

(297) Foregoing statement he thought would have to be modified with respect to the southeastern territory. St. Paul is on the Missouri River basis. New York has always had substantially the same rate to California points as other points east of the Mississippi River, because of the sea competition, which fixes the rate.

(298) Rate fixed by sea competition via all lines. (299) Witness described the building up of transcontinental freight business. Contracts made with merchants for all their business at a rate a little higher than the average water rate. The Morgan Line and Southern Pacific Company were an important factor in competition for through business. Witness represented Southern Pacific in traffic meetings, but was not opposed by Union Pacific as to the basis of rates west of New York. Rates fixed by sea competition.

(300) Union Pacific and Southern Pacific were not sharp competitors. "Q. Well it was a competitor for that business? A. It was seeking that business but it was a connection of the Southern Pacific. Q. It was a competitor with the Southern Pacific for that business? A. It was a part of the line that was competing for that." (301) Testified as to general agents of S. P. Co. prior to 1901. (302) "Q. Well now your men were at that time actively engaged in soliciting business for your line alone were they not? A. The Southern Pacific? Q. Yes. A. That was part of their business. Q. That was part of their business? A. Yes. (303) Q. Trying to get all they could? A. Yes for all its line. Don't forget it had a line from Ogden west." U. P. a connection of the S. P.

(303) Witness became Traffic Director of the U. P. July 1, 1901. (304) So far as traffic matters are concerned, S. P. does not control Texas lines. Witness has no more control of Texas lines than if S. P. did not own their stock. Controlled traffic relating to through business simply because of his jurisdiction over both ends of the road. Did not make many changes in the system of the two roads at the time witness organized his traffic department. Texas lines not controlled by S. P.

Consolidation of agencies.

(305) Consolidated the agencies in Chicago, St. Louis, Pittsburg and Cincinnati. Mr. Neimyer is General Western Agent, and has charge of Chicago, and witness thought that Cincinnati, Pittsburg and Detroit agencies reported to him. (306) Neimyer's territory extends as far east as Pittsburgh, as far north as Detroit, and as far south as Ohio River, but witness thought not west of the Mississippi River.

Control of routing.

Witness thought there was no traffic, or, at least, very little, that Neimyer could route at his pleasure, either by the Sunset or Ogden route. "The connection which originates the traffic, dominates and controls the routing of it." Neimyer could not route any business at all important in amount. (307) The object in having a freight agent and solicitors is to work with the other lines and get traffic from them. Agents solicit freight to be routed over Harriman lines as against Santa Fe and Northern Pacific, and their influence is good, but is not conclusive, and they cannot control routing of freight as against the influence of the originating lines. They are "watchers and solicitors of the originating line, keeping up our connection with them."

U. P. and S. P. never were competing.

(308) There is competition between lines from the east for the Pacific Coast trade, and our agents assist in that competition as against other lines, competitors of the Southern Pacific. Mr. Neimyer, as between the Southern and Union Pacific, is competing for one as against the other to-day as much as he ever did. The Union and Southern Pacific never were competing. He has practically always worked exclusively for the Ogden route. Witness not sure about agent at Pittsburg.

(309) Now there is but one agent for the Union and Southern Pacific at Pittsburg. "If he found that the lines leading from Pittsburg to New Orleans were working a certain line of traffic, he would help that line. On the contrary, if he found they were working it direct via Chicago or St. Louis over the U. P., he would work that line." He would simply do what the two agents would have done had there been separate agencies. Northern Pacific is competing with the Union and Southern Pacific.

In many cases to the interest of S. P. to route traffic via Ogden.

(310) I would not say that the Union and Southern Pacific joint agents were competing with themselves, for the two roads do not compete, because the U. P. is a connection of the S. P., and in many cases it is to the interest of the S. P. that the business move via Ogden, because it would get a larger net out of the rate. There may be some exceptions to that, with respect to the Pittsburg territory and territory west. As to Atlantic seaboard territory, where the competition is most rife, the conditions are just as they always were. There are separate agents at New York, at Boston, at Philadelphia, and witness thought at Baltimore, which work their territory just as independently as they ever did.

(311) Witness thought there could not possibly be said to be a competition between the Union and Southern Pacific for California business; that there never had been such competition, because the former and the latter were connections. (312) "You might draw the Union Pacific agency out of New York, I think, to-day, and I think it would not affect the volume of business which the Union Pacific gets with respect to this trans-continental traffic."

Could not possibly be competition between S. P. and U. P. for California business.

(312-313) Agencies necessary not to compete for business, but as means of communication with connecting lines and for advertising purposes. (313) Necessity for separate agencies has passed away by reason of changed condition. *In New York City, Union and Southern Pacific had a joint agency at one time prior to the purchase of stock of the latter by the former. This was many years before 1901.* (314-316) Describes division of authority of officers and agents of Harriman lines.

Purpose of agencies.

(317) The Navigation Company in connection with the Doddwell line and the Southern Pacific Company and its line, competed for trans-Pacific business. "The Union Pacific participates in both lines, don't forget that." (Note: When witness made this statement he doubtless had in mind the proposition that the Union Pacific was a partner of the Southern Pacific, so to speak, in the O. & O. Steamship Co.)

Trans-Pacific business

(318-319) Exhibit 74, list of joint agents of the Union and Southern Pacific.

(320) Competition between Union and Southern Pacific, before 1901 and now, will not be evidenced by difference in rates. Witness would not permit Southern Pacific to cut rate in order to take freight away from Union Pacific line, but would permit it now as much as he ever would. Would not permit the cutting of rates to take business from any other company. Does not recall ever having cut rates to and from California for purpose of taking business away from U. P. and other lines. (321) If such cuts were made, it has passed out of witness' mind, and must have been more than 15 or 20 years ago. Witness meant S. P. never initiated the cut. In 1886 there was a war of rates instituted by the Santa Fe. and that involved all the lines to California by the Southern and U. P. routes. Since 1886 the rates have been equal by all roads, and measurably maintained.

Would not permit rate cutting.

(322) Witness thought that in 1903 or 1904 there had been a general advance of 12½ per cent. attempted on all trans-continental lines, but that they could not be maintained. Advance was attempted on account of increased expenses, and otherwise no advance in rates had been made since 1901. A reduction has recently been made in the rates to Utah common points, which was very material and witness thinks some reductions have been made with respect to Idaho points; points east of Huntington on the O. S. L. (323) Witness believes the rates to Montana common points have also been reduced on the U. P. and other lines of road also. Attention of wit-

Utah and Idaho rate reductions.

Rate per ton per mile.

ness is called to reduction in rate per ton per mile on U. P. from .95 of a cent in 1896 to .92 of a cent in 1906. Witness states that it does not necessarily follow from this that rates have not been reduced much. "There might be a change in the movement of the traffic that would work a slight difference in the average percentage. * * * * Any material reduction on a considerable volume of traffic for a considerable period during the year would manifest itself in the average rate per ton per mile * * * and yet, month by month, you will find on different commodities changes in rates in the rate per ton per mile, both advances and reductions which are not the result of any change whatsoever in the rates, but a change in the direction or length of the haul, the average length of the haul." Attention is called to the increase in the earnings per mile of road. (324) Witness thinks rates reasonable. Not only this, but knows that competition is just as keen to-day on the question of rates between the S. P. and U. P. as it ever was.

Rates reasonable.

Traffic relations between U. P. and S. P.

(325) There never was competition to any considerable extent. The U. P. was a connection of the S. P., and had no authority, no right, and could not in any way reduce the rates, except secretly, and witness had no knowledge of its having done so in connection with the S. P. U. P. could not reduce its proportional rate without every one of its rivals, the Santa Fe, the "Q," the Rock Island, the Missouri Pacific, and the Rio Grande, doing the same thing.

N. P. and S. P.

(326) There is some competition between the Northern Pacific and the S. P. for San Francisco business, in the same sense that there is with the U. P. Northern Pacific connects with S. P. at Portland, and they interchange traffic. Witness thought that the Northern Pacific also published through rates in connection with Navigation Company's steamship lines from Portland down, and also from Seattle, but whatever business they carry in connection with the steamship line is infinitesimal.

California—Competing lines.

The Great Northern, Northern Pacific, U. P., Central Pacific, the Santa Fe and Sunset routes are all measurably competitors for California business. Just as much competition as there ever was, except such difference as is caused by the law requiring 30 days' notice of a change of rate. A combination in ownership between Northern Pacific and Great Northern would not affect competition in rates for California business. (327) Giving witness traffic direction, in addition to Harriman lines, of Santa Fe, Great Northern and Northern Pacific, would not affect existing competition under present conditions.

Rate reductions.

Rates have come to a condition of equilibrium, and the most effective influence on rates is the needs of the traffic. "That is the development of it, and that is manifested to the carrier generally through the reports of its agents coming in contact with the shippers, producers, and merchants, or by direct intervention, or petition, or showing on the part of the merchants or producers, and when that showing is made, of course, there is an

attitude of resistance on the part of the carrier, but sooner or later,—but more often sooner than later,—the carriers recognize in some measure the demands of the petitioner and the rates are reduced, but instead of being reduced by the individual carrier, they are usually reduced by the whole bunch, at once, that is, I mean by all the carriers."

Merger did not materially affect D. & R. G.

(328) Acquisition of Southern by Union Pacific, witness did not think materially affected Rio Grande, nor made necessary the construction of the Western Pacific to San Francisco. For the last four years the S. P. at Ogden has given the Rio Grande as large a per cent. of business it had to offer, as the Rio Grande has given the S. P. Rio Grande gave all it had to offer, and S. P. returned an equivalent in tonnage. That is true also as to passengers. According to the custom governing interchange between connecting lines, the Rio Grande has not a thing to complain of. There has been great increase in tonnage, moving both ways over Union and Southern Pacific since 1901, but little increase in tonnage delivered by Rio Grande to S. P., and vice versa. (329) S. P. has worked preferentially with U. P. as to uncontrolled business, but witness did not think anything S. P. has done could have worked that result.

Differential rates via water and rail routes to Colorado and Texas.

Witness thought that rates from Atlantic seaboard and points east of that line near Pittsburg, via the South Atlantic and Gulf ports to Colorado and Texas, were less than by all rail. Business by Sunset route is in competition with lines running from New York and Pittsburg to Colorado. U. P. works business that way in connection with the Savannah route, taking it at Kansas City. There is a measure of competition, but it would not necessarily follow, because the Union Pacific can make a line via Galveston as well as the other way. Competes to-day precisely as it always has done.

Competitive relations unchanged.

One road would not increase rates unless competitors did so.

(330) One road would not increase its rate, unless its competitor did. (331) Increases referred to as occurring in 1903 have been published by all trans-continental lines at the same time. Lines confer as to what rate shall be, but they are not compelled or coerced to abide by the rates, but one line would not increase a rate, unless satisfied that the others would make a like increase, although there might be no assurance that they would do so. (332) Witness did not remember ever having advanced the rate without feeling pretty certain that competitors would follow, but thought there had been cases of reductions in which he had reason to believe that his competitors would rather that he had not done it. That is what he called competition.

Commercial and industrial conditions influence rates.

(333) If the same interest dominated all the competing lines, witness thought the rate would be diminished gradually, just as gradually as though present conditions continued. Commercial and industrial conditions are what influence rates.

As to the reduction of rates, when railroads have reached the point where they maintain and declare dividends to the extent

Lean years.

of 10 or 12 or 15 per cent a year witness states: "It would be well to remember the lean years that the stockholders of those roads have gone through, years when they didn't get any dividend at all; and when you do that and make the average, I think you will find so far as the roads that I have any connection with are concerned, that the average interest on the investment has been very small compared with what is commonly made by commercial enterprises." Under present conditions witness testified that 10 per cent is not excessive.

Under present conditions 10 per cent not excessive.

C. P. and S. P.

(334) "The Central Pacific was the original line operated by the Central Pacific Railway Company. That ran from Ogden to Sacramento and from Sacramento to San Francisco. The Southern Pacific Railroad was constructed by the same people. The Southern Pacific Railroad was built to Yuma on the Colorado River, and the Southern Pacific railroad of Arizona was built across to Arizona; and the Southern Pacific of New Mexico was built across the state of New Mexico to El Paso, or to the Rio Grande river just opposite El Paso.

"Well, those lines, those Southern Pacific lines were built by the promoters and constructors, and practically the owners of the Central Pacific; and the Central Pacific continued to operate them until some time along in 1885, when the Southern Pacific Company of Kentucky, the holding company, was organized, and took over all the stocks of both companies. That is my understanding of it. Of course, I am not an authority on those things, but that is my understanding.

Unity between S. P. and C. P.

"The CHAIRMAN: That is just the point I wanted to determine, that there was a unity of interest at all times between the line from San Francisco east as far as Ogden, and the line subsequently built from San Francisco south that again forms a part of the southern route. WITNESS: Yes sir; practically the same men built them. The CHAIRMAN: And when the holding company under the laws of Kentucky was organized, it acquired both of them at about the same time? WITNESS: Yes sir."

Rate stability.

(335) Testimony as to the effect of the Interstate Commerce Act in restraining illegal practices, and especially with respect to bringing about stability of rates by requiring thirty days' notice before rates can be changed.

Effect of common control.

(336) Witness does not think common control by J. J. Hill of Northern Pacific and Great Northern wipes out competition between them. Hill has got to employ officers and traffic officials; each official has his reputation, his record, to make. He is going to use his influence to build up his line against the other line. and Mr. Hill cannot help that. If he takes that spirit out of the official he destroys his value, and he might as well turn his business over to a hundred dollar clerk.

U. P. dominated by connections.

(337) The U. P. as a middle link in the through line would have to be pretty much what its connections desired. There has never been any serious attempt made to take trans-continental business

to San Francisco via Portland, and the steamship line from there to San Francisco. The U. P. would have a longer haul and a considerably larger proportion of the through rate by interchanging its traffic with the Central Pacific at Ogden than by interchanging with the Short Line at Granger, 130 miles further east. The use of the Ogden line would open up to the U. P. all the Pacific coast points, and interior California points, whereas the other route would lead only to San Francisco.

Never been serious attempt to carry trans-continental business to San Francisco via Portland.

(338) Moreover, if it worked the Portland route it would antagonize the S. P., and if the S. P. were an independent line it would be master of the situation by routing all of its business over the Denver & Rio Grande. It would not have to change its rates or to do anything unlawful. The U. P. could not retaliate without cutting its rates to Portland, and that would hurt it as much as it did the S. P.

(339) If the S. P. were an independent line, it would be essential to the welfare of the U. P. to operate the Ogden route for San Francisco business. The U. P. has always taken that view of it. It seemed to the witness a preposterous notion, to be hardly worthy of a serious answer, that it would be at all to the interest or profitable to the U. P., or even the Navigation Company, to work business via Portland and the sea, as against the Ogden route or the Navigation Company's connection at Portland with the S. P. line.

Not to interest of U. P. to use Portland route as against Ogden route.

(340) The Portland & Asiatic was established by the Navigation Company to take the wheat produced along its line to the Orient. The old Doddwell line had never been profitable. This was the occasion for organizing and continuing the Portland & Asiatic line. All other traffic that it handles through Portland is merely incidental. These steamships took very little trans-continental traffic. The sailings were infrequent. They couldn't guarantee a monthly service, while from Puget Sound and San Francisco there were several lines that gave bi-weekly and sometimes oftener service. All the space on the P. & A. was at times demanded by offerings of flour and local cargo, and the trans-continental traffic shut out. The inward tonnage they worked and got all that they could, making the same rates as were made by Puget Sound.

Portland and Asiatic was established to take care of the wheat produced along O. R. & N. All other traffic is incidental.

(341) "Q. Now the whole situation, Mr. Stubbs—would you ever think of trying to establish a steamship line at Portland to endeavor to compete with trans-continental or Oriental traffic with Puget Sound? A. No sir, as I say, the sole reason, the foundation reason, for the establishment of that line was to take care of the wheat and flour traffic. That is a matter of public knowledge."

Would never think of establishing steamship line at Portland to compete for Oriental traffic.

Some wheat goes south to San Francisco, and a portion is reshipped to South America, but witness does not think that it is in very large volume. The wheat production of California is diminishing rapidly. There are independent steamers and also schooners from Portland to San Francisco.

Relations of O. R. & N. and S. P.

(342) In answer to question what witness meant by testifying in Graham case that Navigation Company and S. P. lines were diametrically opposed to each other and competing vigorously, he replied: S. P. takes business into Southern Oregon, and I think even to Portland, and possibly out of Portland for eastern points. The steamship lines between the Orient and San Francisco, the Orient and Portland, and the Orient and Puget Sound, all compete for the traffic from the Orient to all points in the United States. The Navigation Company, Short Line and U. P. are the connecting links with one of those steamship lines, and, therefore, a competitor of the S. P. so far as the business goes, but it doesn't amount to anything.

Kruttschnitt.

(343) JULIUS KRUTTSCHNITT.

Testimony given before the Interstate Commerce Commission, January 10th, 1907, in the city of Chicago.

Director of Maintenance and Operation of Harriman lines.

Prior to 1901 witness was Vice-President of the Southern Pacific Railway, in charge of operation. Headquarters were in San Francisco. Became an official of the Union Pacific the first of April, 1904. Since then has been Director of Maintenance and Operation of the Southern Pacific Lines and of the Union Pacific System, taking in the Oregon Railroad and Navigation Company and the Oregon Short Line. His headquarters are in Chicago. Has charge of the maintenance and operation of the property.

His subordinates.

(344) Mr. Scott is Assistant Director of Maintenance and Operation. His jurisdiction is co-extensive with that of witness. The operating officials who report to witness are the General Managers of the Union Pacific, Oregon Short Line and Oregon Railroad and Navigation Company and Southern Pacific Company. Mr. Mohler is General Manager of the Union Pacific. His jurisdiction extends from Omaha and Kansas City to Denver and Green River. Green River is about 176 or 180 miles east of Ogden. Balance of the Union Pacific from Green River to Ogden is under the charge of Mr. Bancroft. He is Vice-President and General Manager of the Oregon Short Line and General Manager of that part of the Union Pacific from Green River to Ogden and of the Southern Pacific from Ogden to Sparks, Nevada. Sparks is 555 or 560 miles west of Ogden.

(345) Mr. J. P. O'Brien is Vice-President and General Manager of the Oregon Railroad and Navigation Company. He has charge also of the lines of the Southern Pacific in Oregon north of Ashland. Ashland is about 30 miles north of the state line and about 430 miles south of Portland. Mr. E. E. Calvin is Vice-President and General Manager of the Pacific System of the Southern Pacific Company. His jurisdiction extends from Ashland on the north to El Paso on the south and east, and to Sparks, Nevada, on the east.

No jurisdiction over Texas lines.

(346) The lines in Texas are in charge of their respective presidents. Witness has no jurisdiction over them. Mr. Fay is

General Manager of the lines in Louisiana. He reports to witness. Mr. Thorne, Purchasing Agent, buys equipment for all the systems over which witness has jurisdiction. The requisitions of all the lines except the Texas Lines are made on witness. He approves them and sends them to the President, who has the purchases made. Mr. Lovett is President of some of the Texas Lines, and Mr. Harriman of some of the others, and they frequently correspond with witness, asking his opinion about matters connected with the Texas Lines. Purchases.

(347) The engines for the Texas Lines come out of the common stock ordered for the system. "Q. They take your opinion as to how much money should be expended on the Texas Lines, and where it should be expended? A. I expect you would have to ask them about it. I don't know whether they do or not. Q. Well, they ask your opinion, then? A. Yes, sir." Estimates for improvements and betterments of the lines under jurisdiction of witness during the year are made up by the General Managers first, and then they are submitted to and passed on by witness, with the exception of the Texas Lines. Texas lines—expenditures.

(348) Has no official connection with the Texas Lines. In the appointment of the various officials under the General Manager, excluding the Texas Lines, witness has a supervisory authority. The General Manager appoints General Superintendents, subject to approval of witness. They would hardly submit for his consideration any one below the grade of Division Superintendent. Official appointments.

(349) Mr. Bancroft has a General Superintendent and an Assistant General Superintendent, who report to him and are subject to his orders. The Division Superintendents on all the lines report to the General Superintendent. The only steamship line witness is connected with is the Morgan Line. He has general charge of its maintenance and operation. Mr. Schwerin has charge of the Portland and Asiatic Steamship Company. He does not report to witness. He also has charge of the Portland and San Francisco Line. Officers of steamship lines.

(350) Mr. Schwerin has charge of the Pacific Mail Lines. He reports direct to Mr. Harriman. Witness received his appointment and directions from Mr. Harriman. "Q. Did he (Harriman) map out this plan of having the Pacific System divided up into divisions and under the control of operating officials, irrespective of the mileage owned by each line? A. If you mean whether he prescribed the mileage under each General Manager, yes. Now, as to the limits of the divisions and the jurisdiction of the officials under them, no. Q. You did that? A. Yes, I did that. Q. Did you talk that over with Mr. Harriman? A. In a very general way only."

(351) E. O. McCORMICK. McCormick.

Testimony given before Interstate Commerce Commission, January 10th, 1907, in the city of Chicago.

Ass't. Traffic Director, Harriman lines.

Witness is Assistant Traffic Director of the Pacific System under Mr. Stubbs. Prior thereto was Passenger Traffic Manager of the Southern Pacific, with headquarters at San Francisco, from May, 1899, until April, 1904. He had exclusive charge of all the passenger business of the Southern Pacific during that time. His jurisdiction included the through business to New Orleans and locally on the Pacific coast. Did not have charge of the passenger business of the steamship lines. Prior to 1901 there were no common passenger officials between the Union Pacific and the Southern Pacific above the rank of General Passenger Agent. Witness was appointed Assistant Traffic Director of the Pacific Line in April, 1904.

(352) Since then either Mr. Stubbs or witness have had supervisory charge of the passenger business on all the lines. Local passenger agents of the various divisions report to the General Passenger Agents periodically. Mr. Lomax has charge of Union Pacific passenger business. He reports to witness' office. Mr. Burleigh has charge of the passenger business within Mr. Bancroft's jurisdiction. His headquarters are at Salt Lake. Mr. McMurray has charge of the passenger business within the jurisdiction of the General Manager of the Oregon Railroad and Navigation Company. He reports to witness' office. Mr. Fee has charge of the passenger business on the Southern Pacific Lines to El Paso on the south, to Ashland and to Sparks, and on the through business to Ogden. He reports to witness' office.

His subordinates.

(353) Mr. Batters, General Passenger Agent, with headquarters at New Orleans, has charge of the Louisiana Lines. He reports in a way to witness' office. Witness has no jurisdiction over the Texas Lines, except through business to and from New Orleans, by consent of Mr. Dunlap, who is the chief traffic official of the Texas Lines. If a through rate were made he signifies his assent to be a participant in that through rate. Witness sometimes represents the Texas Lines at traffic meetings, by request, when not convenient for the officials of those lines to attend. It is done very rarely.

Passenger traffic to and from California.

(354) Generally speaking, the travel is toward California in the early winter and back in the spring, but there is more or less winter tourist business all winter long, both ways, and more or less tourist business the year round, so that it compels the Southern Pacific to be a participant in the all year round trip rate, which is unusual in other territory, which rate is open alike to every road in the country. The rates on passenger business for all the territory east of the Missouri River to California and return by all the lines are practically the same. Some routes are slightly higher than others, but on account of the situation of the two rate making points in California, the Southern Pacific has what you might call a free rate for 482 miles between Los Angeles and San Francisco. It gets nothing for a portion of its route. It must make the same rate to San Francisco it makes to Los Angeles—

Rates.

and then the Southern Pacific opens its road to every connection for diverse routes; it does not demand that they send it back and forth over one line, but it is open to everybody in that way.

"Q. And the Union Pacific does the same thing? A. The Union Pacific does the same thing. The Santa Fe Company does the same. Q. So that the passenger business from the eastern territory, east of the Missouri River, can go to and from all California points at practically the same rate? A. At practically the same rate; and by reason of the consent of the Southern Pacific road, with practically the same conditions as instanced now by the Milwaukee & St. Paul, and the Northwestern. The Chicago, Milwaukee & St. Paul operate through car service with the Southern Pacific via Omaha to Denver and to California, and in addition to that the Milwaukee and St. Paul are permitted to operate through car service by way of Kansas City, turning it over there to the Missouri Pacific road, and then to the D. & R. G., and it is taken again by the Southern Pacific at Ogden; and the Northwestern operate a through service. The Rock Island operate a through service by way of El Paso, etc."

Connections which have through car service over S. P. to California.

(355) There is also a through service with the Northwestern and the Union Pacific and the San Pedro. "Q. Now, the lines extending from Chicago to California, connecting at El Paso; for instance, the Rock Island, they run a through service with the Southern Pacific? A. It is afforded the same facilities, as well as the Texas and Pacific, which is a part of the Gould System, officered over by Mr. Jeffrey. And each line also is afforded through service by way of Ogden to such an extent that the Southern Pacific has not a single train over its road that Mr. Jeffrey's line has not through cars on; no train. We even handle them on the Overland Limited now."

Rates on winter tourist business from St. Paul and Minneapolis through Kansas City and southwest connecting with the Southern Pacific to California, are the same as by the Union Pacific. There are tourist cars from St. Paul and Minneapolis out over the Southern Pacific and via Kansas City and the Santa Fe and the other lines to California. Have also had through cars from St. Paul via El Paso. "Q. Two years ago, for instance, the Chicago Great Western operated that way? A. They never closed those gateways to anyone."

S. P. never closed its gateways to anyone.

A passenger can at will select any of the lines, the S. P., the U. P., the Rio Grande, and the Santa Fe, and those lines have through service for the same rates. If a passenger goes by St. Paul and Portland, and over what is called the Shasta route of the S. P., and back, there is an arbitrary charge for that 778 miles between Portland and San Francisco, a higher rate than if he went direct. (356) The difference would be about $15 for the round trip, and has been in existence all the time. There has been no material change for 25 years.

All the lines have through service at same rates.

The rate over the U. P. and Navigation Line to Portland and

around to San Francisco is greater by the arbitrary on account of the Shasta route by reason of the excess haul of 778 miles. It has always existed. Witness did not intend to say that passenger rates to California had not changed for 25 years, but the way of applying the rates had not changed materially. There had been a through colonists' rate as low as $25, now ordinarily $33, the lowest through rates in the world. (357) A round trip to the coast since becoming $110 has always been less than two cents a mile, a very low rate. The lowest rates in the world exist in California itself. The S. P. did not get two cents a mile for some of the local business, and rarely three cents a mile; while the rate between Philadelphia and New York is three cents, and between Chicago and Buffalo is three cents a mile.

Low rates to California.

Colonists' business now in the hands of United States officials at Ellis Island, and not much competition on that business now. The S. P. has always opened its line to its connections in a most peculiar manner; even when it was the only line to the Coast, its divisions via both Ogden and the Sunset routes were practically on a mileage basis, as they are today.

S. P. divisions practically on mileage basis.

(358-359) In referring to the divisions with connecting lines, witness explains that they were fairly liberal "because they were on a mileage basis. If you run up to the connection of a road and you have the use of that road beyond that point on a mileage basis, it is just as good as if you had your own road. You couldn't do it any better; you escape the maintenance of that road and you gain the benefit of it." Describes the way in which expense of advertising is allotted between the different lines and appropriations therefor made. Local passenger rates lower now than ten years ago, because recently witness' lines in Utah, Wyoming, California, Arizona and New Mexico reduced their rates. The facilities were better and the traffic was larger, and they were reduced from five cents to four cents locally.

Mileage basis good as ownership.

Local passenger rates lower.

One way through passenger rates and the round trip tourist rates during the last 15 years have been so greatly reduced by reason of these many round trip convention rates, that the aggregate rates for the last 15 years for through business have probably not been two-thirds as high as they were before. (360) Witness did not think that the through rate from the River to California on one way tickets had been reduced in that period. Rates are freely open to all connections.

U. P. policy unchanged.

Prior to 1901 the U. P. operated its California passenger business over the S. P. from Ogden. There has been no change in that respect since that time. "Q. Has there been any change in the policy respecting the interchange of business, joint passenger business and joint passenger rates with connecting lines since 1901? A. None that I know of. They were free and open to all connections in 1901 as they are today. Q. And prior to 1901? A. And prior to 1901, even when the Southern Pacific was the only line into California." In the rate war between the Atchison and S. P. prior to

Rate war.

1901, the U. P. was on the S. P.'s side. It could not consistent with its interests take any other position.

(361) J. A. MUNROE.

Munroe.

Testimony given before Interstate Commerce Commission, Jan. 10, 1907, in the city of Chicago.

Freight Traffic Manager of U. P. lines east of Green River for last two or three years. Prior to that Freight Traffic Manager of the U. P., with jurisdiction as far west as Ogden. Lost jurisdiction over lines west of Green River two or three years ago, partially, but not entirely. Mr. Reeves as General Freight Agent of Oregon Short Line has jurisdiction locally over U. P. line, subject to my approval. Mr. Reeves has jurisdiction over S. P. as far west as Sparks, and over U. P. as far east as Green River, and over the Short Line. Witness has been Freight Traffic Manager of the Union Pacific since the organization of the present company, February 1, 1898. Was also Freight Traffic Manager during the Receivership back in 1893, and has been associated with the Traffic Department since as far back as 1882. (362) Has reported to Mr. Stubbs since July 1, 1901. Prior to that reported to Mr. Burt, President of the Union Pacific.

Freight Traffic Manager, U. P.

(363) It was the custom of witness to represent Union Pacific at freight meetings with other roads for many years. Had nothing to do with the pool of the trans-continental lines. His knowledge about it was very superficial. In the rate meetings referred to he represented no one but the Union Pacific. The Southern Pacific was separately represented. Prior to the Receivership of the Union Pacific witness represented the line from Granger to Portland also.

Rate meetings.

(364) There has been no material change in the representation at meetings since Mr. Stubbs' appointment. Each company has had its representative at the meetings. "We always endeavor to have direct representation of the Union Pacific at each of those trans-continental meetings." In attending these meetings, was under the direction and supervision of Mr. Stubbs. There has been no change in witness' relation to these conferences since Mr. Stubbs' jurisdiction was extended over the Union Pacific. Witness has attended as many of the rate meetings since Mr. Stubbs' appointment as he did before.

(365) Since the jurisdiction of Mr. Stubbs was extended over the Union Pacific, excluding the San Pedro line, no change has been made in the movement of freight as to business moved by way of Ogden and other business by way of Granger and Huntington. Prior to the receivership when witness' jurisdiction extended over the line to Portland, over the O. S. L. and O. R. & N., the U. P. moved its transcontinental business just as it does now. No considerable amount of traffic for San Francisco or other California points ever moved by way of Portland, and then by steamer. The U. P. has never considered that a practicable and feasible route as against the connection with the Central Pacific.

Portland route to San Francisco not practicable.

"Q. Why? A. Because we have always felt it would always cost us more to route San Francisco traffic via Portland, that we would lose more than we would make by it. The line is unnatural in this, that when you arrive at Portland, you are about as far from San Francisco as you are at Ogden. Again, San Francisco is the only point on the Pacific Ocean from which the boats from Portland, or at which boats from Portland touch. There are in California a number of points in common with San Francisco, to which a very large and handsome tonnage is attached, and we always felt that our possible gain by using the Portland route for San Francisco business would be much more than offset in value to the Union Pacific by the resultant action. There was a large business eastbound—I am giving you the thoughts that occurred to me at the time. If I am too long about it stop me.

Reasons why Portland route to San Francisco is not practicable.

(366) "Q. No, I wish you to make it as full as possible. A. There were at that time about 8,000 carloads of perishable fruit at points substantially local to the Southern Pacific, the routing of which to the Missouri River we satisfied ourselves they could control, and we had hard enough work to hold our share of it anyway. We did not wish to add to our burdens and we felt that the line by way of Portland was not on a parity in service with the line via Ogden; that we would have to have a differential to San Francisco to do any business and the bad effects of the differential would cost us more than the business which we would gain by the Portland route would represent. To illustrate, we have never felt that it would be wise to accord to San Francisco a lower rate via Portland and water than we accorded Portland direct for the all rail service. We did not care to advocate what we thought, an unnatural freight rate basis of adjustment by charging the Portland man for less service more than we charged the San Francisco man for the greater, when both competed more or less in the territory intermediate as between Portland on the north and San Francisco on the south. Those are some of the reasons which actuated us not to open the Portland line for business."

An attempt to open that Portland line even by a reduced rate to San Francisco would be met by the Central Pacific. And the same relative facilities would continue. As to the volume of traffic, the interchange with the Central Pacific at Ogden, and the amount of revenue derived from that are very much larger than the volume and the amount that under any conceivable practicable conditions the U. P. could hope to get by way of Portland.

Small amount of Oriental traffic via Portland.

Oriental traffic, so far as the U. P. is concerned, has always been left in the hands of its western connection serving the port of San Francisco. A small amount of Oriental traffic is moved by way of Portland, limited by reason of there being only monthly sailings.

Asiatic business via San Francisco.

(367) Sailings from San Francisco average one every ten days, and there have been at times nine first-class ships in that service. On business for Asiatic ports from San Francisco, witness has worked the Pacific Mail, Oriental and Occidental, and the Japanese

lines. Asiatic traffic always worked by way of San Francisco, except as witness has already stated, to a limited extent by Portland. The amount by Portland is and has always been very small. The rates from Southern California points to the east via the San Pedro are uniform with the rates via the Southern Pacific and Sacramento. Union Pacific is getting some increased business now by having a shorter line in connection with the San Pedro. The distance from Ogden to Los Angeles via Sacramento and the Southern Pacific is substantially 1,100 miles, whereas it is a few hundred miles shorter via Salt Lake; about 300 miles. The strongest competitor of the Union Pacific for that business is the Atchison line via Albuquerque and the longer line via Sacramento has ruled the Union Pacific out of a large amount of business in the past, because it could not equal the service of the Atchison road. With the San Pedro line the Union Pacific is better fixed and can duplicate it.

Atchison strongest competitor of U. P. on So. California business.

(368) The divisions with the Central Pacific were satisfactory to the Union Pacific.

(369) Does not think that the possession by the Union Pacific of the line to San Francisco via Portland was a strong weapon in the hands of the Union Pacific to prevent the Southern Pacific from making an unfair demand as to divisions. Does not think that the possession of that route by the Union Pacific would make it possible for that company to prevent the Southern Pacific from materially advancing their percentages of the through rates for the service west of Ogden.

Portland route not a strong weapon for U. P.

It would not protect U. P. against demands for unfair divisions.

(370) Attention of witness is called to the Sunset line from New York to San Francisco, which operates in competition with all rail lines between the same points, and this question is asked: "Q. Now, with that object lesson in front of you, don't you think that a good active working of that line via Portland and boats to San Francisco would have made it impossible from motives of self-interest alone for the Southern Pacific to have demanded an unfair division of the through rate as against the Union Pacific? A. No. Q. You are still of the same opinion, are you? A. I am."

(371) P. & A. carries chiefly local traffic to the Orient, consisting largely of flour. Their inward tonnage, consisting notably of tea and rice, curios and silk occasionally, is scattered all the way along from Portland east, and is handled over the U. P. lines. That has been true for ten years or so of the traffic carried by the P. & A. or its predecessors. There is just the same competition now that there was prior to 1901 between the S. P. and the U. P. with the Short Line and Navigation Company to Portland. (372) Witness thinks U. P.'s westbound takings of trans-continental trade would be five to ten per cent. more than they were ten years ago. (373) Sunset line never regarded as a competitor on Chicago business. (374) Witness does not recollect an average of one communication a month to a Sunset man. "They are just as separate and distinct from us as the Atchison road is."

Same competition obtains as prior to 1901.

Ill. Cent. via New Orleans not a competitor of Ogden route.

Witness does not think Illinois Central through New Orleans could ever compete with the Ogden route. When you get from Chicago to New Orleans, you are farther from San Francisco than when you started. The lines from Kansas City to El Paso are much more a competitor. Traffic moves that way, and U. P. recognizes that competition as active. As to Chicago business, the Union Pacific on the one hand, and the lines from Chicago to El Paso and the Southern Pacific from there on, are competing lines. From territory on a line about the Ohio River, both routes would naturally be competing. Anything south of the Ohio River would get a better service via New Orleans than via Omaha, and anything that originates north of there would go via Omaha. Cincinnati is about on the dividing line. (375) Occasionally business north of that line has moved via El Paso and business south via Ogden. "Q. And Pittsburg would be pretty strongly competitive territory then, wouldn't it, as it is right on that line? A. Pittsburg is very strongly competitive. Q. As between the Southern Pacific and the Union Pacific? A. As between all the gateways." East of Kansas City to the Atlantic seaboard, to a limited extent, the territory south of the Ohio River is competitive, and the territory north of the Ohio River naturally moves by the northern gateways. Most of those places move on parallels, but not always. The lines from Chicago that take business between California and El Paso are the Rock Island system in connection with the El Paso & Southwestern. Then the lines radiate from El Paso; the Texas Pacific with their various connections via such points as Texarkana, Iron Mountain Fort Worth and the M. K. & T. When these lines competing by way of El Paso get that business, they deliver it to the S. P. The Atchison has its own line from Chicago to California

Gateways for business originating north and south of Ohio river.

U. P. cannot make California rate without consent of S. P.

The U. P. cannot make a rate to California without the consent of the S P. The Portland business that is in competition between the Navigation Co. and the S. P. is very small.

(376) In any contest in which the Portland route might be used as a club against the S. P., the U. P. would get the worst of it, the latter's loss and suffering would be many times greater.

Hahn.

(377) HENRY HAHN.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

A Portland shipper.

Wholesale grocery merchant at Portland, connected with Wadhams & Co. for sixteen years. Also has interest at Prineville, Crook County, Oregon. Goods shipped to him from the east prior to 1901 came over the U. P., the S. P., the Northern Pacific and the Great Northern, and prior to that date his firm was solicited for shipment of goods from the east by the different lines mentioned.

(378) At the present time no competition between the Navigation Company and the S. P. Co. so far as is apparent to the witness. The U. P. and S. P. are represented by a single solicitor.

(378) E. NEWBEGIN.

Newbegin.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Agricultural implements.

(379) Connected with R. M. Wade & Co., dealers in agricultural implements, Portland, Oregon. Has lived in Portland eight years.

Routing of his business.

(380) Prior to 1901 most of witness' shipments from the east had been routed via Ogden and Sacramento. Witness thought the stuff was routed over Rio Grande, Colorado Midland and S. P. Goods came from Missouri, Indiana, Illinois, New Jersey, Pennsylvania, Michigan and Minnesota. At the present time witness ships over U. P. and Navigation Company, and partly by Northern lines. Is no longer solicited by agents of S. P.

Sacramento gateway closed.

(381) Witness did not mean to say that Ogden gateway was closed to the Denver & Rio Grande via Huntington, but that the gateway was closed for bringing cars via Sacramento. He cannot ship cars via Ogden and Sacramento to Portland,—trans-continental freight.

(383) Shipments via the Great Northern and Northern Pacific to the Willamette Valley are not satisfactory. Witness always routes over U. P. U. P. gives better service. Claims for damages against the U. P. or the Navigation Company are more readily settled than against the S. P. or Great Northern.

U. P. the preferred route.

(384) Shipments via the Union Pacific are a matter of preference, not of necessity; "we usually pay the freight."

(386) The bulk of witness' business comes in over the U. P. to Portland.

(387) T. D. HONEYMAN.

Honeyman.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Hardware.

Wholesale and retail hardware at Portland for thirty years. Brought goods from the Atlantic seaboard and the interior states. Prior to 1901 there was active competition between the Navigation Company, the S. P. and the Northern Pacific for shipments from the east, and witness received shipments over the Sunset route, the Nav. Co., the Northern Pacific, and the Great Northern, and also the Sacramento route.

Routing of his business.

(388) Shipments could then, and now also, be made by way of Panama, thence by the boats of the Nav. Co. There were and still are lines of boats around the Horn to San Francisco, and witness shipped great quantities by that route. At the present time there are the following lines competing for Portland business: The American Hawaiian line, the Panama line, the Northern Pacific, the Great Northern, the U. P. and the Sunset.

(389) The rates being the same as the northern lines, it is not to witness' advantage to ship via the Sunset route, because too circuitous. Goods which the witness might bring by the Sunset route he would bring by the ocean route instead, by the Panama or Ameri-

can Hawaiian line. Shipments by last two lines are large, and witness moved everything possible by ocean.

Plenty of routes besides Harriman lines.

(390) Chicago freight is routed by various middle west routes, and comes into Portland over the Northern Pacific, Great Northern or Union. Great Northern comes in over the Navigation Co. from Spokane, and witness routes quite a little business that way. All have their solicitors. Witness has plenty of ways to get in goods, besides the Harriman lines. Routes most of his own goods, with the exception of some stuff that is controlled by the larger corporations, who insist on making their own deliveries, U. S. Steel Company, for instance.

(391) The Sunset route used to make low rates into San Francisco, forced by steamer conditions to that point, and witness used to take advantage of them by adding the steamer or rail local from San Francisco to Portland.

(392) Rates were established by the railroads to meet water competition. There was a time when nearly everything moved into Portland at less than published tariffs.

Hall.

(393) O. O. HALL.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Hardware.

Employed to look after freight shipments of Honeyman Hardware Co., at Portland, Oregon. Formerly employed by Navigation Co. Frequently received visits from freight solicitors, but not so much as in the past. "I shut them off a little." Solicitors for Harriman lines simply solicit freight for those lines, without specifying whether Sunset or Sacramento route. Witness ships a good deal of stuff over the Navigation Co. Freight coming from north Lake ports (Superior and Duluth) would come over the Great Northern and Northern Pacific, and from Chicago and Milwaukee ports it would move by some of the Iowa lines to Omaha.

Routing of his business.

(394) Sometimes freight moves Duluth to Omaha by the C., St. P. M. & O.

Witness was solicited by Northern Pacific and Great Northern, but not by Canadian Pacific. Also by the freight agents of all the Iowa roads.

Freight coming by the Great Northern reaches Portland over the Navigation Company from Spokane.

The witness, not the Harriman lines, routes the freight, and routes it by the Nav. Co., not by Sacramento.

Gill.

(395) J. K. GILL.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Stationery and Books.

Has lived in Portland 35 years. Engaged in business of wholesale and retail stationery and books. Prior to the consolidation of the U. P. and S. P., witness said they shipped "generally by the Union Pacific and the O. R. & N., and sometimes by the—well,

we used all the lines, but mainly the O. R. & N. and Northern Pacific."

(396) Infrequently shipped over the Sunset Route, but other lines were more direct. Occasionally solicited to ship by Sunset route. Are frequently solicited by the lines of the middle west, east of Omaha. Not solicited so much by the Great Northern and Northern Pacific. Routing of his business.

Witness has always been a heavy ocean shipper, by the Panama route until the American Hawaiian line gave better service, and formerly by sailing vessels. Witness still an ocean shipper. Heavy stuff from Atlantic seaboard comes in largely by ocean. Most of his stock originates in New England and New York, and if it does not come by water, it comes mainly by U. P. and O. R. & N.

(397) He now ships a larger proportion of rail freight by the O. R. & N. than he formerly did, but that has not been a diversion from the Sunset route. Witness could still ship that way.

In the old days the route chosen was not so much due to the solicitation of agents as to the question of rates. Sometimes a personal element would enter in, and he would give a shipment to a man for personal reasons.

The question of freight congestion was an incident that could not be forseen.

(398) W. A. MONTGOMERY. Montgomery.

Tesimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Connected with same stationery business as the foregoing witness at Portland. Testimony substantially the same as foregoing witness. (399) Water shipments made nearly altogether by American Hawaiian Line. The American Hawaiian gives a net rate from Portland into New York. Witness doesn't know how the shipment comes up from San Francisco, but thinks it comes by the Navigation Co. Does not recall freight in any case coming by rail from San Francisco. Purchases made in California sometimes come from San Francisco by boat; sometimes by rail. Portland. Stationery and Books.

(400) O. R. & N. steamboat lines between Portland and San Francisco, together with the Hawaiian line, operate in opposition to all the railroads in the country. Witness did not know what the rates over the O. R. & N. steamboats were, these being paid by the American Hawaiian line.

Not solicited as much as formerly, and used O. R. & N. because of the less time consumed. Would almost have to use that line in preference to the Sunset or Sacramento route.

(401) Would not use the Sacramento route even if the Harriman people insisted on it.

Witness familiar with the route practically since 1901, and is free to ship any way he wants to. Knows of no limitation upon manner in which he can route goods, or of any railroad restrictions of any kind. No limitations on routing.

Ehrman.

(401) EDWARD EHRMAN.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Wholesale Grocer.

Has lived in Portland as wholesale grocer 20 years. (402) Purchases goods from Atlantic seaboard and middle states. Formerly solicited by both S. P. and Nav. Co. They no longer solicit against each other. Ships over the U. P., S. P., Great Northern and Northern Pacific. Goods over the S. P. mostly originate in the south, in Texas, Louisiana, and California. Goods from San Francisco come up both by boat and rail.

(403) There is another regular line of boats between San Francisco and Portland, besides the San Francisco and Portland line, the latter being formely called the O. R. & N. Formerly shipped goods from the east by the Sunset route, but only to a limited extent. Does not care to ship that way, though he can do so.

No railroad restrictions on routing as he pleases.

(404) In addition to regular lines between San Francisco and Portland, there are a number of tramp boats. Can route his freight any way he pleases. Knows of no railroad restrictions.

Routing by the Sunset Route in the old days might have been due to personal solicitation.

McCusker.

(404) THOMAS McCUSKER.

Testimony given before Interstate Commerce Commission, Jan. 24th, 1907, in the city of Portland, Oregon.

Portland. Former S. P. solicitor.

Has lived in Portland 18 years. (405) Since December 1st in the real estate business. Prior to that for sixteen years with the S. P., and about a year ago with the Harriman lines as Asst. Gen. Agent of the Nav., U. P., and S. P. Companies. Was Contracting Freight Agent of the S. P. road during a part of the 16 years. First handled claims and did office work. Was Contracting Freight Agent about 13 or 14 years. As such his duty was to solicit freight for S. P., both via the Sunset and the Ogden and Sacramento routes. In soliciting via the Ogden route worked in connection with the Missouri Pacific, Rock Island, Burlington, and Rio Grande, as well as the U. P. Considered the U. P. and Nav. Co. the S. P.'s strongest competitors into Portland. Solicited for all classes of goods, from all points east, the Atlantic seaboard, Chicago and Pittsburg territory, and Missouri River territory. Also solicited shipments out of Portland to points competitive with Nav. and U. P. Co.

Solicited both via Sunset and Ogden routes.

Hops, prunes, hides.

(405-406) "Q. State what classes of commodities were shipped out of here in competition with the Southern line? A. Hops and prunes, hides, and I don't know about the lumber shipments; that is so far as the Union Pacific was concerned. * * * I don't believe that we solicited the lumber in those days in competition; in fact, I know we did not via Ogden." Large quantities

of hops were produced principally in Willamette Valley, 90 per cent of the Oregon hops and Washington hops grown are within that valley.

Hops shipped chiefly Sunset.

Large quantities of hops shipped chiefly over Sunset. The U. P. and Nav. Co. competed for that business and was the strongest competitor. They got hops into Portland from the Willamette Valley off the boats of the Nav. Co., and of the Oregon City Transportation Company, and frequently the S. P. lines. The shipments originating in that valley also solicited by Northern Pacific, Great Northern, all lines. In average year hops ran from 75,000 to 100,000 bales. A large average car would not exceed 15,000 pounds, and the bales weigh from 180 to 200 pounds.

Willamette river boats.

(407) The Nav. boats on the Willamette, when the water permitted, ran as far up as Corvallis, about 90 miles by rail from Portland. Frequently water not sufficient for boats to get there. Always went as far as Dayton.

Willamette River is in center of hop district, and hop district is tributary to river boats; also to rail line of S. P.

Routing of hops.

(408) Hop business solicited both by S. P. and O. R. & N. When they came in by latter's boats to Portland, witness didn't remember their going on to San Francisco by boat. Went east by O. R. & N., the Northern or Southern Pacific. Sometimes when soliciting for S. P., witness routed hops east by Sacramento, and from Ogden via the Rio Grande, the Burlington, Missouri Pacific, and U. P. Lines east of Ogden had soliciting agents in hop district.

(409) As soliciting agent of the S. P., witness tried to get Atlantic seaboard business via the Sunset, so as to get a long haul.

Routed Chicago business via Ogden.

Chicago business he routed via Ogden and Sacramento. Considerable freight moved that way. The same rates were in effect to Portland via Ogden as via all the other lines. Prior to consolidation, Southern Pacific worked with all the lines entering Ogden.

(410-411) Describes changes in freight officials after consolidation.

Changes after 1901.

(412) Some little time after the consolidation, agents were told to solicit seaboard business via the Sunset, and other business, where the local to New York would be too great, via the U. P. Reason given for the change was that business should be distributed to give the most revenue for least service. Did not solicit freight via Sacramento. That gateway closed by withdrawing the rates.

(413) Prior to consolidation witness knew of no lumber being shipped out of Portland into the Rocky Mountain territory over the S. P.

Wool.

Willamette Valley wool S. P. competed for strongly via the Sunset.

(414) Live stock did not move to the east via the S. P.

Rates now same over all lines.

Years ago there was competition between all the lines regarding rates. That condition was different in 1900, and in recent years rates have been the same via all lines.

(415) So far as witness knew, the conditions as to tariff were just the same at the time the consolidation took place as they are to-day. The cut rates possibly existed up to 1901. It frequently happened that the western lines did not cut rates, but that the trunk line, or Missouri River lines, did.

No fruit moved via S. P. from So. Oregon.

(416) No fruits were handled via S. P. from Southern Oregon, the charge for refrigerator cars being more by that line. No fruit moved by either Sunset or Sacramento. Possibly a little may have gone by Sacramento, but not much.

(417) After the consolidation the S. P. worked solely with the U. P., and not indiscriminately with other lines, and the U. P. and S. P. did not attempt to take business from each other.

Traffic—Portland to San Francisco.

Regarding Portland to San Francisco business, witness as agent of the S. P., solicited for and obtained occasionally hides, also box shooks. These commodities witness thought were also carried by boats of the O. R. & N. Lumber went down by schooner.

Hides.

(418) Hides to the east moved both via the Sunset and the rail lines. S. P. didn't get much of that, although it was solicited. Didn't solicit paper from the paper mills for the Sunset because it is out at Oregon City and up the river.

Traffic from Cincinnati common points.

(419) From Cincinnati common points, witness solicited freight via New Orleans and Sunset, and, when he could not get it that way, via Ogden and Sacramento. Considerable business came by those routes,—whiskey, merchandise of different classes, canned goods and vehicles. After the consolidation the instructions were to solicit it via Omaha.

(420) Witness didn't know how much farther it was to Ogden by Sacramento route than by Nav. Co., but the mountain haul takes about two days longer. Witness thought it was a matter of 680 miles from Portland to Sacramento, and it was possibly as far from Sacramento to Ogden as from Portland to Ogden.

Lochman.

(421) LOUIS LOCHMAN.

Testimony given before Interstate Commerce Commission Jan. 24th, 1907, in the city of Portland, Oregon.

Salem. Hop business.

Has been in hop business at Salem 15 years. Prior to 1901 solicited by both S. P. and Nav. Co., but not now. Shipped hops over the S. P., U. P., and Denver & Rio Grande. Never shipped via Sacramento. Shipped over the Nav., Short Line, and Denver & Rio Grande. Hops came to Portland from Salem by the S. P. and by Nav. Co.'s boats. Boats quit running two or three years ago. Another line of boats, however, is running, over which witness ships.

Routing of his business.

(422) Hops that witness shipped by boat to Portland have nearly all gone east by the Rio Grande and its connecting lines from Denver east. Has had no success in attempting to route cars directly from Salem by Rio Grande. In order to ship that way it was necessary to secure Rio Grande cars. Otherwise to go by

U. P. or S. P. Southern Pacific Sunset cars went Sunset; Union Pacific went over Union Pacific. "Q. At the present time you can ship either on the Southern Pacific or Union Pacific in any car that happens to be in the yards, can't you? A. Yes sir. Q. But if you want to consign anything over the Rio Grande you must procure a Rio Grande car? A. Yes sir." By reason of that fact has been unable to make shipments over the Rio Grande. Rio Grande man is about the only one soliciting hops at Salem, except the agent for the S. P. and U. P. Since 1901, up to about a year ago have sent large quantities of hops by Sunset, but no longer does so.

Rio Grande cars.

(423) Shipments now go by all-rail via Omaha, or else Rio Grande line, where shipped by boat. In old days of competition witness could ship hops in transit to any point north of Eugene; for instance, to Salem, and consolidate them there, or could ship to Portland without paying local freight, and consolidate there and get free storage. All that now done away with. Formerly got 30 to 60 days free storage on the S. P. dock at New York.

Consolidation of hop shipments.

(424) Dayton is about 25 miles from Portland. Competition between S. P. and Nav. Co. stopped about 1901. Nav. Co. boats run as far as Dayton, and the other line farther up, about 100 miles, as far as Corvallis. The latter are very good boats, taking from six to ten carloads of hops at a shipment.

River lines

(425) Other line runs to Corvallis when water permits, from about December to June or July—a boat every other day. Just as good service as the Nav. Co. ever gave. Boats on the Willamette River frequently settle on a sandbar or strike a snag. Deep water navigation up there consists of a boat drawing about six or eight inches of water.

(426) The Nav. Co.'s only remaining boat still runs to Dayton. The Great Northern and Northern Pacific for two years or more have not solicited the hop business. The Rio Grande agent still does. Nav. Co. and S. P. helped weigh hops and gave free storage until about August 20, 1906, about the time the Interstate Commerce Act went into effect, while the Northern Pacific and Great Northern had discontinued this practice about two years before. The two latter roads have not solicited witness' business for three, four, or may be five years.

Free weighing and storage until 1906.

(427-428) Have made no shipments this year by Great Northern. Probably shipped four or five cars by boat to the Northern Pacific. Could get Denver & Rio Grande cars at Portland, but not at Salem, (and hence could ship by boat from Salem via the D. & R. G.).

(428) FLETCHER LINN.

Linn.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Manager, Oregon Furniture Mfg. Co. at Portland. (429) Never had much solicitation for California business. Shipped

Portland. Furniture.

principally by rail, not very much by boat. Rates about the same, and witness shipped altogether by rail. More convenient. Rate by boat now taken by measurement on furniture, and is much higher than by rail. Four times the rate by rail.

Rail and boat rates.

(430) Rail rates were not changed since the change made in boat rates. Change in boat rates has affected witness' business, because he can no longer get service to get goods out, that is, for carload business. Has to ship it now in less than carload lots. There are other lines of steamers to San Francisco, besides Nav. Co., and the raise in rates on furniture was common to all. The change took place four or five months ago, certainly more than three months ago.

Car shortage.

(431) Before the steamer rates went up witness was unable to ship to San Francisco in carload lots. No one told him he couldn't ship in carload lots, but he simply cannot get the cars. There is a car shortage. Witness is on the west side of the river, and does not have access to the terminal grounds, and there are few cars on this side of the river. People on the other side, he thought, got more cars. Car has to go about 80 miles, round trip, to reach his factory from terminal. There has also been a congestion of traffic on the S. P., principally at Oakland and San Francisco. Witness' factory on S. P. (433) Witness stated he had not asked for any cars at the terminal grounds.

Breyman.

(434) OTTO BREYMAN.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Portland. Saddlery goods.

About fifteen years a manufacturer of saddlery goods at Portland. Imported his leather from California, and hardware, hames and other things from Atlantic seaboard largely. Prior to 1901 shipped largely by boat. About five years ago shipped leather largely by boat; now by rail altogether. (434) "We have no steamer service." That has been the case several years. It was worse this last year. (435) Brings some goods from Atlantic seaboard by American Hawaiian Lines, trans-shipped by boat at San Francisco. Apart from that, has given up trying to ship by boat from San Francisco on account of the poor service. Rates by the Nav. Co.'s boats were formerly 25 cents a hundred, including insurance; by rail it is now 31 cents. Would ship from the east by water if there was adequate steamer service between San Francisco and Portland, but on account of the poor service shipped by rail.

(436) Never shipped by water to any great extent, because the freight was handled in bad shape. Doesn't ship in sufficient quantities to justify carload rates. Many years ago patronized Sunset route, but not to any extent. Shipped shoe dressing that way which he wished to keep from freezing, and does now. Never ships by the Sacramento route. The Southern Pacific doesn't solicit his business as against the O. R. & N. any more.

(436) GEORGE H. KELLY.

Kelly.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Eugene, Oregon. Lumber.

(437) Twenty-one years in the lumber business (10 years at Eugene). His firm is the Booth-Kelly Lumber Co. They operate four mills in Lane County. All of them located on the Southern Pacific. The nearest mill is 120 miles from Portland and the farthest about 145 miles. When running full time, mills cut about 100,000,000 feet per annum. Ship practically all over the United States, except a little part of New England and the South. Eight or nine years ago a mining timber rate of $16 per thousand feet to Arizona was withdrawn.

Tie rates.

(438) This was prior to 1901. Railroad ties to San Francisco or a bay point take a rate of $5 a ton, while a piece double that length, or any other length, would go for $3.10. The distinction was made in Interstate Commodity Tariff No. 7, about two years ago, witness thought.

Cannot deliver ties in San Francisco.

(439) A tie is about the lowest grade forest product except a mining timber. It is very easily transported, and does not require a special kind of car. Witness cannot make deliveries of any ties in San Francisco, or in territory where the Western Pacific are trying to buy ties. Previous to 1901 everything that he shipped went south via Sacramento and Ogden, and since that time all goes north via Portland and Ogden. Rates via Sacramento withdrawn. This was on shipments to Colorado or any of the interior mountain country. Previous to 1901 witness did not ship anything east of Denver, but after the amalgamation of U. P. and S. P., the rates were extended on through to Chicago via Portland, but they never had that rate via Sacramento.

Changes and extensions of rates eliminated some markets, but gave him more territory.

(440) Before the Harriman people got the Union Pacific, witness shipped everything into Southern Utah, Colorado, California, Arizona and New Mexico; that was his sole market. After the consolidation he began to ship east and to go clear to the seaboard. "Q. And you mean by that you made up what you lost in the California and Arizona markets by creating a new market east? A. Yes, very much more in quantity of output. Our output is very much more than it was then, and some years it is a very much better market. We prefer the California market to any other, but still our shipments to the east have increased. In 1903 we shipped about 30 per cent of our cut east—in 1904 I should say 30 per cent—in 1905 40 per cent, and in 1906, 60 per cent went east via Portland. Commissioner Lane: You have not been embarrassed then by the changes affected in 1901? Witness: No; while we have in a measure lost some territory, we have gained more territory."

Output greatly increased.

(441) Since 1901 output has increased about 35,000,000 feet. Formerly his output was 25,000,000 and of this, eighty per cent.

went to California, divided 20 per cent. to the S. P., as company material, and 60 per cent to California for commercial uses.

(442) Old rate of $3.10 a ton to bay points for 700 miles over the Siskiyou Mountains is less than a half cent a ton a mile.

Car shortage.

Witness had a good car service, except in 1903 and this year. Cannot get a car for anything now, except for railroad business; not for commercial business either north or south. If you deal with a railroad you don't always get plenty of cars, but you stand a lot better chance.

(443) Witness has same rates as Portland, though his mills are 120 to 140 miles farther. Prior to 1901 seldom got anything east of Denver, and, if he did, had to absorb a differential. Since 1901 can ship to any states in the east.

Rates have stimulated business.

(445) There has been no adjustment in rates to keep witness out of business, but rather to increase it. Only places where witness has lost territory have been between Sacramento and Ogden, and in Arizona. Rates there increased about eight years ago. Prior to 1901, in routing cars to Colorado by S. P. via Sacramento, it moved from Ogden over the D. & R. G., occasionally by the Midland, now by the U. P. (446) Has just received notice that a new tariff will go into effect, making $5 a minimum rate to any California point.

Tie rates.

(448) Witness knew that there were steam schooners operating from the mills at the mouth of the Columbia River, Gray's Harbor and South Bend, which carried ties to San Francisco. Schooner rates about $9.50 a thousand feet; (449) about $5.70 a ton; and for a great many years the rail rate from Portland on ties has been $5, while witness only paid $3.10. At the same time, witness had the same rates east as the Portland mills, while having this advantage to California Bay points.

(450-451) Cannot get cars to points south of Ashland, even for Company material, due to the congestion of the lines down there. (452) The $3.10 rate was supposed to just equal the Portland water rate at the time it was made.

Meyer.

(452) J. F. MEYER.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Portland. Car service agent.

(453) Since July 1, 1904, Car Service Agent of Navigation Company and Southern Pacific Company at Portland. Jurisdiction on S. P. to Ashland, near the boundary line of Oregon. Has charge of distribution of cars in a general way. For ten years prior to July 1, 1904, Car Service Agent of the Nav. Co.'s line. S. P. had a separate agent.

Rules for routing foreign cars.

(454) If witness furnished shippers a Milwaukee car, and the load is east of Council Bluffs, then it would be routed over the Milwaukee. That is the general rule, whether the car comes in empty or loaded. That is common in railroad law, and has been in

effect all the time. If the car comes in loaded, it may be sent back by a different route. If it comes in empty, it has to be sent back to the same gateway that it came. Pooling of cars has had an advantageous effect. It makes freer movement.

(455) When witness wishes cars, and has no cars of his own, he makes demands on his immediate connection, namely, the Oregon Short Line. Reports to Mr. O'Brien, the General Manager, from time to time, that he is not getting cars, and Mr. O'Brien will correspond with Mr. Bancroft and Mr. Kruttschnitt.

(456) Witness lets his cars go to the Northern Pacific when he is in shape to do so. Northern Pacific owes him at Portland something like 800 or 1,000 cars. (457) If a shipper desires to route to the east over the Northern Pacific from Portland, in case the Northern Pacific is not there to send a car, witness doesn't generally send one, but does when the car is routed east over the O. R. & N. and U. P. All of the Harriman lines move almost in any direction. Equipment of any of these lines is at home on any part of the associated lines. There is no restriction upon the use of his equipment for movement over the Rio Grande from Ogden, except if he has a congestion, he naturally loads them for the business of the Harriman lines. Witness tries to equalize the delivery and interchange of cars at the different junction points.

Use of his equipment by foreign lines.

(458) Lets his own cars go off his lines freely, except in times of congestion. (459) Witness' policy is to keep Harriman cars on Harriman lines. (459-460) Statement to dispatchers, agents and conductors, directing them not to load cars for material shipment for Gould roads. (460) Witness said he misunderstood instructions in sending circular, and it was withdrawn a few days after issue. (461) Circulars in regard to the loading of cars for interchange of business with the Rio Grande.

(463-464) Pretty much all the mills in this territory had orders for material for use on the Rio Grande, Rio Grande Western, and Western Pacific before the circular was issued. Do not ordinarily give preference to shipments of material for Harriman lines as against commercial shipments. As testified by Mr. Kelly, do give preference to car material shipments going to Chicago. That is a little out of the ordinary of railroad material.

(465) There is no preference in distribution of cars between the various Harriman lines. Has no system of car apportionment here. Distribute cars according to the demands put in by shippers. Has had a good deal of trouble this year with car shortage. Remembers no case, except materials for refrigerator cars, where the railroad gave him the preference over commercial shipments. (466) In the distribution of cars, treat the Harriman lines as one system. (467) Treating Harriman lines as one system obviated the necessity for returning empties and facilitated business. (468) Up to August 29, 1906, a rate of one-half cent a ton per mile on Company material, that is, material for Denver & Rio Grande, and other railroad material, existed. No such rate since that time.

In distribution of cars, Harriman lines treated as one system.

(469) On that date, August 29, Harriman lines allowed Denver & Rio Grande, Denver & Rio Grande Western, and Denver Pacific material to move in any kind of car, exactly the same as commercial shipments. Prior to that time they applied to Denver & Rio Grande to send empty cars to load with their Company material, but they had been unable to furnish the cars. They owed the Harriman lines cars. His deliveries were in excess of receipts, and he thought it was time for them to hustle up a few cars of their own. If witness sent out the ordinary quota of cars, without getting a return of empties from the east, in about a month the road would be without a car.

D. & R. G. owed cars to Harriman lines.

N. P. owes 800 cars.

(470) Northern Pacific owes Harriman lines about 800 cars. (471) There is free interchange of cars with other lines, except where they begin to get very much in witness' debt, or when Harriman lines get very much in their debt. Then the free interchange stops until the car question is evened up.

Jenkins.

(474) R. H. JENKINS.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Portland. Clerk for N. P.

Since the first of last September, Chief Clerk in the freight office of the Northern Pacific at Portland. Prior to that, a year with Northwestern Improvement Company, and prior to that with the Navigation Company as Freight Solicitor, and also the Chief Clerk in the General Agent's office. Was Freight Solicitor from about 1898 up to about two years and a half ago. Until two years and a half ago Nav. Co. and S. P. Co. had separate solicitors. Witness thought not since that time. After 1901 tried to get Atlantic seaboard business to move over the Sunset route, otherwise by the U. P., and if shipments originated west of the Atlantic seaboard the order of preference of the two roads was reversed.

(475) Ogden gateway was closed to shipments by way of Sacramento, witness thought, about 1902.

McBride.

(475) W. C. McBRIDE.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Portland. Gen. Agent D. & R. G.

General Agent, Denver & Rio Grande, at Portland since 1902. (See page 478.) Employed by that Company ten or twelve years. (476) In 1900 witness secured about 320 carloads of hops from the Willamette Valley, 280 of which went by Sacramento and Ogden, and 40 by Portland, the Nav. Co. and Short Line. In 1902 witness secured less than 30 carloads of hops from same territory, which moved out by the Nav. Co. and Short Line. Witness' business from the Willamette Valley is nothing to what it was prior to 1901. Solicits from that territory as actively as before. From Ashland north business moves via Portland. Thinks the distance between Ashland and Portland about 340 miles. Portland to

Witness' business from Willamette Valley not as great as prior to 1901.

Ogden by S. P. route, witness thinks about 1,350 miles, by Nav. Co. and Short Line about 890 miles. The bulk of the hops grown in the Willamette Valley comes from the vicinity of Salem, 53 miles from Portland, so that by new route S. P. secures 53 miles to Ogden, instead of 1,300 miles, as formerly.

Sacramento route closed in 1902.

(477) Sacramento route closed in 1902. Circular with regard thereto set forth. (478) Solicits lumber shipments in the Willamette Valley. Adverse influence of Harriman lines makes his lumber traffic from that territory very light. Adverse influence exerted by agents through local favors. Furnishing of cars to move traffic over witness' lines at certain times is restricted, but not often.

Furnishing of cars not often restricted.

Hops.

(479) Hops usually moved to the Atlantic seaboard by Sunset. Moved that way more or less every year. Less this year than prior. Bulk this year have gone by Nav. Co. Seventy-five per cent of the hops that witness moves come into Portland by boat. These shipments are consigned to various points through the east—to New York, and some to London. After leaving witness' lines at Denver or Colorado Springs go east by Rock Island. Application of rates over S. P. lines south of Portland; apply east of Colorado common points via U. P. and Rock Island only. (481) Witness thought that in 1905 Mr. Miller's figures of about 10,000 tons delivered to the Short Line and then to the Nav. Co. by his road, and 110,000 tons the other way, was about correct. Certainly the east-bound movement is very much heavier than the west-bound.

Navigation route much shorter and better than Sacramento route.

(482) Navigation route much shorter than Sacramento route, about 450 miles, and the service better, probably two days difference. The former practically a water level, with the exception of the Blue Mountains, and the latter is over the Siskiyou and Sierra Nevada Mountains. The rates are the same as they are by the Sacramento gateway, and the witness still has joint rates, through bills of lading, and through loadings from Portland and points in the Willamette Valley. "Q. Would you say that this route via Ogden and Huntington is a better or worse route than the route via Sacramento? A. I would say that it was a better route. Q. And it has been open to you during all this period of time? A. Yes sir. Q. And freely? A. Yes sir. Q. For any business you could get out over it? (483) A. Yes sir. Commissioner Lane: You have not been embarrassed in getting business here by the difficulties of the Sacramento gateway? A. Not particularly by the closing of the Sacramento gateway, no sir." He has been embarrassed by the influence of the O. R. & N. on mill men and people of that kind. Witness thinks the same reason prevails in the Willamette Valley. "Q. But other than this adverse influence of rival agents, the transportation facilities which have been given you whenever you got the business, have not been impaired or hampered in any way whatsoever? A. No sir, after we have secured it, and it is in transit, it moves freely."

Transportation facilities afforded witness have not been impaired.

Miller.

(484) R. D. MILLER.

Testimony given before Interstate Commerce Commission, Jan. 25th, 1907, in the city of Portland, Oregon.

Portland. Gen. Fr't. Ag't., O. R. & N.

General Freight Agent, Navigation and S. P. Companies at Portland. (485) On carload shipments of hops from Salem to Portland, 50 miles, S. P. Co. gets twenty cents per hundred pounds. The through rate from Salem to Chicago is $1.50. (486) The through rate on hops to New York City also $1.50. When hops moved to Chicago by way of Sacramento, the S. P. got approximately sixty cents per hundred from Salem to Ogden. Also the same amount on shipments from Portland to Chicago or New York via Sacramento. (487) Witness not responsible for closing Sacramento gateway, and doesn't know who ordered it closed. Prior to closing, business was solicited by representatives of the U. P., and also of the S. P., to move via Portland. In witness' opinion, it was more profitable to the S. P. to have business go by the Nav. Co., rather than by Sacramento.

Divisions on hop traffic.

(488) It would be, of course, more advantageous for S. P. to get the haul to Portland than to have the hops go by boat. They didn't go by boat, however, to any considerable extent. (489-490) Rate on hops to Portland by S. P. or by Navigation boats, twenty cents. Portion of through rate on to Ogden, either by Nav. Co. or Sacramento, sixty cents, which, after absorbing the twenty-cent local, leaves forty cents from Portland to Ogden. Witness testified that this forty cents left carrying line a profit. The twenty cent rate into Portland was as remunerative to the S. P. as the sixty cent rate to Ogden. This was his opinion, though he thought the forty cent portion from Portland to Ogden allowed the carrier some profit.

Rates on hops.

(491) Rates from Salem to Portland are relatively low, by reason of water competition. Many of the hops originate south of Salem, where the revenue to Portland is several times as great. (492) Where hops moved into Portland by independent river line, and then over the Nav. Co., instead of from Portland over the S. P., witness thought that the S. P., though losing their earnings on the business, was not prejudiced, because it more than made up that loss in other directions, as the result of the business moving from its rail points via Portland. (493) If witness was solely an officer of the S. P. line, he would not necessarily be interested in getting traffic only for the S. P. Since the consolidation, an arrangement was made by which the S. P. on traffic other than lumber moving via Portland, received forty per cent. of west of the Missouri River portion of the through rate, subject to its local rate as its maximum.

Movement of hops by independent river line.

(495) On lumber, witness' recollection was, S. P. received 25 per cent. of the west of the Missouri River portion, subject to its local rates as its maximum. Those arrangements were made in 1902 or the latter part of 1901. The hop business for the Atlantic

seaboard is divided about equally between the Sunset and the Portland route. The shippers make the division. Sometimes the shipper's request for one route or the other is refused, because of the car supply. (496) The hop business for the Atlantic seaboard and Europe is solicited for the Sunset route. Failing in effort to get it that way, it goes via Portland.

Shippers make division of traffic.

As an officer of the O. R. & N., witness thought it would be a good thing to have the seaboard business go via Sunset, provided the business for all other territories moved via Portland. He stated that the seaboard business had been apportioned to the Sunset route, and business for other territories to the U. P. route. Witness said the conditions were highly competitive. He didn't mean as between the S. P. and the O. R. & N.—that there were other competitors in the field.

(497) There is competition in this sense, that all business can move by either route, and the shipper decides which way he will consign it. Witness endeavored to control consignment by solicitation. In years gone by hops moved to the Atlantic seaboard either way.

Competition.

(498) Witness thought that since 1901 the movement to the seaboard via Portland had been somewhat in excess of previous years, due to adverse car conditions on the Sunset route. Otherwise substantially the same. Both routes are free to shippers. Companies do not retard shipments either way. There are through routes over the Great Northern via Portland and Spokane, also the Northern Pacific via Wallula.

Both routes free to shippers.

(499) There are many agents in this territory soliciting for the Rio Grande lines, the Rock Island, the Burlington, the Northwestern, the Milwaukee, the Illinois Central, and the Chicago Great Western. Working the Willamette Valley as far south as Ashland for all classes of business. The roads represented by these agents are connections of the U. P. at Omaha. The business goes via Portland and Huntington, and witness is anxious to please these connections. They are competitors of the Sunset route, and are trying to get business to move via Huntington.

Freight solicitors.

(500) Most of it has moved via Portland this year. The route from Portland to Ogden via Sacramento is 600 or 700 miles farther than by Huntington. It is 682 miles from Portland to Sacramento, 700 from there to Ogden. From Ogden to Portland via Huntington, 885.

(501) It is a cheap haul, down grade, from Willamette Valley to Portland. The Sacramento route never took a large proportion of the business from the Willamette Valley. Harriman lines still engaged in business with the Denver & Rio Grande, but that line only furnished 9,000 tons last year.

Harriman lines and D. & R. G.

(502) Harriman lines delivered them 110,000 tons. Distance from Portland to New York by Sunset Gulf route, 5,000 miles. From New York to Portland via Missouri River route, 3,200 miles.

From Chicago to New Orleans via S. P. and Ill. Central, 4,300 miles. The closing of the Sacramento route simply involved the choice as to how the freight was moved from Portland to Ogden. After reaching Ogden just as free to move over any of the connecting lines as before.

Rate adjustment favorable to Portland jobber.

(503) The jobbing point for Willamette Valley is Portland. The rate adjustment is such that Portland sells San Francisco and California products to the exclusion of San Francisco jobbers. The rate from San Francisco to Ashland would be the rate from San Francisco to Portland plus the rate from Portland to Ashland. The water competition from San Francisco to Portland reduces the rate. The boats go up the Willamette from Portland as far as Corvallis.

(505-506) Witness was glad to have freight move over Nav. Co. from Portland. Did not represent the Sunset route as an agent. Sunset route begins at San Francisco. Only represented S. P. lines to Ashland. Thinks it to the public's interest to have traffic move over line of least resistance.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME II.

NEW YORK CITY, JANUARY 5, 1909.

(507) A. H. PAYSON.

Payson.

Testimony given before Interstate Commerce Commission, Jan. 29th, 1907, in the city of San Francisco.

Assistant to the President of the Santa Fe for four years, and resides at San Mateo, Cal. Prior to that time was employed by the Santa Fe. Duties largely confined to the acquisition of terminals about San Francisco Bay. Nothing whatever to do with traffic. (508) One of the incorporators of the Northwestern Pacific Railroad Company. Prior to the incorporation of the Northwestern Pacific, the Santa Fe had railroad lines to the North and West of San Francisco—a line running from Arcata, which is nine miles north of Eureka, through Eureka to a point on the Eel River, about 43 or 44 miles in length. (509) Witness thinks it was built four or five years ago. Already built when acquired by the Santa Fe. This line had a physical connection at the south with a logging road up the Mad River. Traffic over the road mostly lumber, with some dairy products. Transport logs to the mills and lumber to the landings near Eureka. (510) From the landings it goes to San Francisco, Australia and China. Frequent steamers between Eureka and San Francisco. Sailing vessels of small size to Australia. No regular boat line. When the Santa Fe acquired its stock the corporation that owned the bulk of this railroad line was the Eel River & Eureka Railroad; the balance of the railroad was the property of small corporations then owned by the same parties.

San Mateo, Cal. Ass't. to Pres't of Santa Fe.

Lines in Northwestern California.

(511) The logging road is a separate company, and belongs to some lumber company. Thinks they call it the Arcata and Mad River. "Q. So that the Santa Fe's holdings are this line of road, about 51 miles of road—something like that? A. Yes sir. Q. With the connections at Eureka and the other landings that you have mentioned? A. Yes sir." This property was practically under the charge of witness. The Santa Fe also owned another road that went into the Northwestern Pacific, the Fort Bragg &

Arcata and Mad River

Fort Bragg and Southeastern.

Southeastern; starts from the coast at the Port of Albion, and runs about 23 miles southerly and easterly. Albion is, I should say, nearly 200 miles from Eureka, further south. (512) Albion is about 80 miles from San Francisco, perhaps more, nearly 100 miles, so that this line of road commences nearly 100 miles from San Francisco, and runs southeasterly toward that city. The Santa Fe acquired the road from the lumber interests that own the Albion mill.

(512) The Santa Fe purchased that line as the nucleus of a feeder to tap the Mendocino timber country and be tributary to San Francisco. At the time of the purchase of the Fort Bragg & Southeastern, Sante Fe did not know whether they would use it as part of a through line from San Francisco to Humboldt Bay, or whether it could be used only as a feeder for such a through line. Subsequent surveys determined that it could be used only as a feeder. The line in the north, the Arcata line, was to be part of a through line to San Francisco. (513) Nothing but logs for the Albion mills move over the Fort Bragg & Southeastern. That line, together with the aggregation which witness described about Humboldt Bay, were the only lines of the Santa Fe that went into the Northwestern Pacific. S. P. lines that went into the Northwestern Pacific were the North Shore, running from Sausalito to a point called Cazadero, up just north of the Russian River, with a branch to the Town of San Rafael. Sausalito is on the other side of the Bay from San Francisco, about six miles by water. The road is about 80 miles in length. (514) Any connection between this line and the Fort Bragg & Southeastern would be a practical impossibility on account of the mountainous country. Another road that went into the Northwestern Pacific is the San Francisco & North Pacific Coast, afterwards called the California Northwestern, about 137 or 140 miles in length. The latter runs up the Sonoma Valley, a valley parallel to the coast, but entirely separated from the North Shore topographically; also from the Fort Bragg & Southeastern.

Constituent lines of Northwestern Pacific.

(515) The other Southern Pacific line is the Eureka & Klamath, running from Arcata towards Trinidad, on the coast. It is not yet quite completed to the coast, and reaches no port, except that of Eureka, over the line formerly owned by the Santa Fe. There is also a branch that leaves Arcata and goes around on the spit which separates Eureka from the sea, at which point it meets ships. It is practically a lumbering road exclusively, bringing logs to the mill on Humboldt Bay, with supplies for the logging camps, going out. The Eureka & Klamath is 25 or 35 miles in length.

Eureka & Klamath.

(516) The Northwestern Pacific acquired these roads, and it proposed, as witness understood, to build the connecting link between the present northerly end of the California Northwestern and the southerly end of what was the San Francisco Northwestern. In other words, it proposed to connect the Southern Pacific proper-

Connecting link of Northwestern Pacific.

ties on the south with the properties formerly of the Atchison on the north. The California Northwestern is the Southern Pacific line; the San Francisco Northwestern, the Atchison line. The California Northwestern included the North Shore, and that other road up the Sonoma Valley, belonging to the S. P. The Santa Fe intended to extend down toward the Bay of San Francisco. Instead of that, consolidated the two roads, and the intention now is that the road that extends up through Willits shall meet the witness' road at Humboldt Bay. (517) The San Francisco Northwestern was the name that the Santa Fe gave to those small properties which it got into a single corporation up around Humboldt Bay. By the Northwestern Pacific arrangement a joint line was substituted for the proposed line that the Atchison had intended to build alone. (518) If the Atchison had built, it was their intention, if practicable, to build into an entirely different territory from the S. P. lines. There is nothing to feed a railway between the present northern end of the S. P. property and the redwood timber around Humboldt Bay, a distance of about 110 miles. That is a stock country. (519) Hasn't heard of any other railroad projected into that region. Atchison operates no steamships. The Fort Bragg & Southeastern has a contract with Albion Steamship Company to bring lumber to San Francisco. It is not billed through, but simply delivered to the Steamship Company at Albion, the latter carrying it to San Francisco, from which point it has an outlet over the Santa Fe or S. P. (520) That is the only steamship contract of which witness has any knowledge. Witness has nothing to do with that part of the business. Has nothing to do with any of the Santa Fe Lines, except these northern properties. There is a line from Bakersfield to Mojave, that is used jointly by the S. P. and the Santa Fe, about 70 miles, owned and operated by the S. P., the Santa Fe paying a rental.

The San Francisco Northwestern.

Albion S. S. Co.

(521) It would be possible to build a line from Oregon, southward, without using the line owned by the Northwestern Pacific. The line could follow the coast most of the way. It would be difficult, but possible. The Northwestern Pacific has the easiest means of access from the north to the San Francisco Bay. (522) The terminals of the Santa Fe around the Bay of San Francisco are owned exclusively by it. (523) There is a joint ownership with the S. P. of the stock yards out there in the Potrero, but otherwise the S. P. has no interest in any of the Santa Fe property in San Francisco or Oakland. The Atchison also leases from the S. P. Co. a line from the Needles to Mojave. This is used exclusively by the Atchison. There is also a small road from Bakersfield to the Sunset oil fields, built jointly by the S. P. and Atchison, owned jointly, but alternately operated; an oil road exclusively.

Possible line from Oregon, along coast.

(524) The line to Sunset is about 20 miles in length. With the exception of the Clark line, the Atchison and S. P. are the only eastern rail connections to California. The Northwestern

California rail connections.

Pacific has the most practical route of access from the north. Witness understood that there are plans for an independent line from San Diego and east, over what is known as the Spreckels' line, running east from San Diego over to Yuma. (525) Witness doesn't know whether it is contemplated to build that line eastward out of California, or not. At the time of the Northwestern consolidation, witness did not think any other road was trying to enter that territory. Arrangement with the S. P. was made to save expense. It is a difficult country, both for construction and maintenance. There was not enough in it to make it worth while to build two parallel roads. Both the S. P. and Atchison had made surveys and were planning to build, and both abandoned the idea of building independent parallel lines. (526) Atchison had not definitely located its line, but knew in a general way where it was going to build, if forced to build an independent line.

Arrangement with the S. P. was made to save expense.

(527) The S. P. is building at right angles to the coast, at Coos Bay. Lines sold by the Atchison to the Northwestern Pacific were wholly in the State of California, and had no connection with any lines extending out of that State. Their only outlet was by boat. The S. P. lines that went into the Northwestern Pacific were also entirely in the State of California. (528) The Atchison and S. P. lines which were consolidated into the Northwestern Pacific were not at the time of the merger competing in any sense. When the links necessary to connect them are completed, the effect will be to give those lines an outlet to California and the east. If the S. P. had completed its line to a connection with the Atchison lines, instead of a consolidation, practically the same arrangement might have been effected by ordinary trackage contracts, just as at Mojave. (529) There is very little business between the two ends of the proposed line. If you go 20 miles south of Humboldt Bay, there is very little timber from there down to Willits, the end of the S. P. properties on the north.

Lines sold to Northwestern Pacific located wholly in California.

Consolidated lines were not competing.

After reading into the record the testimony of Mr. Payson given before the Interstate Commerce Commission in the city of San Francisco, complainant offered in evidence at the hearing in New York City on Tuesday, January 5, 1909, the following exhibits in connection with Mr. Payson's testimony: (530-533) Agreement between S. P. Co. and Atchison Co. relating to various railways in northwestern California, dated December 7, 1906. (534-538) Agreement, dated December 7, 1906, between S. P., the Atchison, and the Northwestern Pacific Railway Company. (539-542) Agreement, dated March 12, 1907, between the S. P., the Atchison, and the Northwestern Pacific, giving the right to prevent default under mortgages. (542-553) Agreement, dated March 30, 1907, between the S. P., the Atchison, The Farmers' Loan & Trust Co. Trust agreement relating to stock of the Northwestern Pacific R. R. Co.

Agreements between S. P. and Santa Fe in relation to lines in Northwestern California.

(553) JOHN D. SPRECKELS.

Spreckels.

Testimony given before Interstate Commerce Commission, January 29, 1907, in the city of San Francisco, Cal.

Has lived in San Francisco many years, and is president of John D. Spreckels & Brothers Company. San Francisco.

(554) Railroad of the Coos Bay, Roseburg & Eastern R. R. & Navigation Co., which witness' Company sold to the S. P. Co., is about 29 miles long. One terminus of the road is at Myrtle Point, passing through Marshfield on Coos Bay, (555) and runs out into a timber country and into the coal fields. There is also an agricultural country tributary to it, the products of which are marketed over this railroad and in that Company's steamships down to San Francisco. The principal product is coal, however. Some lumber. The ships owned by the company are the "Breakwater" and the "Czarina," the former carrying 48 passengers and 600 tons, the latter, a collier, carrying about 1,400 tons. (555) When the "Czarina" couldn't get a sufficient cargo at Coos Bay, she would run up to Portland, and carry a cargo from Portland to San Francisco. (556) Carried coal out of Coos Bay, and general merchandise on return trip. (557) There is another regular steamer running from San Francisco to Coos Bay, but no other outlet. Coos Bay, Roseburg and Eastern R. R. and Nav. Co.

(558) Negotiations for the sale of the line to S. P. were conducted through Mr. James Smith. Witness thought the negotiations were on behalf of the S. P., because prior to Mr. Collis P. Huntington's death he had been looking into the acquisition of the road. The S. P. wished to overcome the grades on the Shasta Mountains, rather than haul the wheat as they did up to Portland, and then bring it down by steamer. They could cut off about 300 miles up and 300 back, by going into Coos Bay. The trade was concluded at the time of the earthquake. (560) S. P. is now operating both the road and the ships. The transfer to the S. P. was made by selling the stock and bonds. The bonds were never issued. Property cost witness considerably over a million dollars. The operation of the boats was not profitable. There was more profit in the railroad. (561) The traffic was small. Witness understood that the S. P. contemplated building a road that would practically be an extension of his road. Witness had not found the operation of the coal mines profitable. Witness had surveys made looking to extending the road from Myrtle Point to Roseburg, so as to connect with the S. P. Turned these surveys over to Mr. Huntington at the time of negotiations. Sale to S. P.

(562) The S. P. now has entire outlet into San Francisco from Oregon. The Spreckels road was built 10 or 15 years ago. Witness sold rails to Mr. Graham, who built the road, and had to take it over, because Graham could not pay for them. The nearest point of that road to the S. P. was about 69 miles. (563) The only outlet for the Coos Bay country was by boat. The S. P. never competed in that. Never got in there at all. Never handled freight S. P. not a competitor.

or passengers from the territory served by witness' road. (564) As soon as the S. P. got its line through to Coos Bay, supposes there would have been competition between witness' boats and the trains of the S. P. Witness' boats did not have enough business, as it was. (565) Coal bunkers on the Howard Street wharf in San Francisco went with this trade.

Shotwell.

(565) W. J. SHOTWELL.

Testimony given before Interstate Commerce Commission, January 30, 1907, in the city of San Francisco, Cal.

San Francisco. Gen. Ag't., D. & R. G.

For 14 years has represented the Denver & Rio Grande and other through lines, at San Francisco, as General Agent. (566) Not doing as heavy business as prior to 1901. Prior to that time considered the agents of the S. P. neutral. Their attitude has since gradually changed. The business controlled by the S. P. agents is almost invariably routed either by the U. P. or the Sunset. (567) Witness thought the S. P. agents were now indifferent as to whether freight went by Ogden or the Sunset route.

Bissell.

(567) WILLIAM A. BISSELL.

Testimony given before Interstate Commerce Commission, January 30, 1907, in the city of San Francisco, Cal.

San Francisco. Ass't. Traffic Manager, Santa Fe.

Assistant Traffic Manager of the Atchison System at San Francisco. (568) The chief representative of the Traffic Dept. on the Pacific Coast.

(570) As a general proposition, the fruit traffic out of Southern California is divided up about the same as it was four or five years ago. There has been no change in the last two years. Doesn't think that Atchison has made any effort to get fruit traffic that originates on S. P. lines. Most effort has been made to get cars back fast enough to take care of the fruit that was offered. There

No arrangement with S. P. in regard to getting traffic from territory of each other.

is no arrangement between Atchison and S. P. by which each refrains from endeavoring to get business of that character originating on the line of the other. There was such an arrangement. The business is so located down there that it naturally divides itself about equally between the two companies, and the Atchison has all it can do to get its equipment back to take care of its own fruit. (571) The routing of most of that fruit is controlled by the location of the packing houses.

(572) If the Atchison was short of business, witness thought they would solicit business originating on the S. P. lines. Witness

Division of orange traffic.

didn't know whether arrangement testified to by Mr. Stubbs at Chicago on January 8, 1902, to the effect that there was an understanding between the two companies that the orange traffic should be about equally divided, still existed. (573) Witness thought S. P. in the early part of the season routed oranges via El Paso, and later, as the weather moderated, via Ogden. From El Paso they are taken to Chicago by the Rock Island or Texas Pacific,

witness thought. At all events, they don't go over the Santa Fe. (574-575) It has taken every effort that the Santa Fe could put forth to take care of the orange business for the past two years. The Santa Fe endeavors to maintain a schedule time on shipments of oranges to Chicago of eight days. Witness did not remember having any talk with Mr. Stubbs about the schedule time on trains from Southern California to Chicago so as to equalize the service on both roads. (575) The traffic managers never had any consultation with reference to the rates to be put in effect by the San Pedro.

California & Oriental S. S. Co. a failure.

(576) The Atchison gave up the line running from San Diego to the Orient, the California & Oriental Steamship Company, because it was a failure. Was never consulted by any official of the Pacific Mail in regard to withdrawing it. Quit the San Diego line about a year after the Atchison rail reached San Francisco. (577) An arrangement was made that the Atchison was to have certain space on the Pacific Mail steamers leaving port, and were to receive 25 per cent. of their inbound cargoes. (578) That traffic is unloaded from the ships to the tracks of the S. P. and switched over to the Atchison. The Atchison was entitled to furnish a certain amount of Pacific Mail tonnage. If they furnished less, the Pacific Mail took what was supplied. When the Atchison had more tonnage than the boats cared to take, then they held it for the next boat. No matter whether the Atchison filled this space or not, the Pacific Mail agreed to give them 25 per cent. of the inbound traffic. (579) No railroad company solicits inbound Oriental business. The competition is over in the east between the Pacific Mail, the Suez route and the tramp steamers, and the other lines here, the Puget Sound lines. Most of the traffic that the Atchison received from the Pacific Mail went either to Chicago or New York.

Agreement only where special equipment is required.

(580-581) With the exception of the oranges and the Oriental traffic, witness knew of no other arrangement for division with the S. P. Arrangement as to oranges includes all citrus fruits, nothing else. The only business that can be held to be included in what you could call an arrangement is business for which special equipment is required. (582) The area in Southern California devoted to the production of oranges is approximately equally distributed between the two initial lines. The oranges are collected in packing houses, some of which are local to one line and some to the other. Outside of the general policy that prevails, that one road will not try to get oranges out of the packing houses of another, there is nothing between the two companies in the nature of a contract or bargain that they should not do those things. Witness is at entire liberty tomorrow or the next day to go upon the rails of the Southern Pacific and scalp oranges local to their packing houses if he so wishes, so far as being limited by any agreement with the Southern Pacific. (583) Each road has its solicitors in the field, and tries to influence the growers to patronize their respective packing houses. Packing houses are usually built by associations,

and whenever one is going to be put up, the Atchison tries the best it knows how to get it on its line.

Calvin.

(584) E. E. CALVIN.

Testimony given before Interstate Commerce Commission, January 31, 1907, in the city of San Francisco, Cal.

San Francisco. Vice Pres't. and Gen. Manager, S. P.

Vice-President and General Manager of S. P. System, with jurisdiction north to Ashland, east to Sparks, and southeast to the Rio Grande, about three miles this side of El Paso, the Texas boundary line. Has no jurisdiction over any part of the Short Line or Navigation Company. (587) Mr. Richardson, Superintendent of Transportation of the Southern Pacific, has charge of the distribution of cars on that railroad. He reports to witness. In the handling of cars he treats the Southern Pacific, Union Pacific, Short Line, and O. R. & N. as Company cars as distinguished from outside cars. That policy was adopted two years ago by general agreement of all the General Managers of all those lines. The meeting was held in Mr. Kruttschnitt's office. The orders came from Mr. Kruttschnitt. (588) There is a sort of car clearing house in Mr. Kruttschnitt's office at Chicago, that keeps track of the mileage of the cars, but not of the distribution of them. (589) Testimony as to the handling of equipment on the Harriman lines.

Car clearing house.

Jones.

(590) H. A. JONES.

Testimony given before Interstate Commerce Commission, January 31, 1907, in the city of San Francisco, Cal.

San Francisco. Freight Traffic Manager, S. P.

Witness is Freight Traffic Manager of the Southern Pacific Company's operated lines. Has occupied that position since September 1, 1906. He succeeded Mr. Sproule. (591) Was formerly Traffic Manager of the G. H. & S. A. Railroad in Texas, a part of the Southern Pacific System. Operated by themselves. Mr. J. C. Stubbs is his superior officer. Territory embraced within his jurisdiction is from the Rio Grande to San Francisco, San Francisco to Portland, San Francisco to Ogden. Mr. Miller of Portland is the General Freight Agent of the Southern Pacific lines in Oregon, and reports to witness.

No competition out of Portland between O. R. & N. and S. P.

(592) "Q. Is there any competition in business out of Portland between the company with which you are affiliated, and in connection with business concerning which Mr. Miller reports to you and the traffic over the O. R. & N.? A. No sir." Does not know whether there formerly was or not. No business is moved from the east to Portland by way of Sacramento that witness knows of that comes through the Ogden gateway. Mr. G. W. Luce is the subordinate of witness on all of the Southern Pacific lines except those east of Sparks and north of Ashland, while Mr. Reeves is witness' subordinate on the lines east of Sparks.

(593) "Q. It appears by the testimony here that from time to time rates are increased or lowered between here and Portland. Under whose authority is that done, under whose immediate direction is that done? A. Well, in fixing rates, we have a basis that the rate clerk has adopted for that, a basis—either a differential, higher or lower than certain rates, or a mileage basis, or a rate to the terminal and a rate back. In a change of rates, if a line were to change a rate to-day the rate clerk would naturally change his rate, unless he had instructions otherwise. That is how rates are generally made." If a change in the boat rate between San Francisco and Portland were made, the natural result would be to have the rail rate changed also, unless the rate clerk had orders otherwise. (596-598) A railroad might discriminate against ties, because it wanted the ties for its own use, and also make a different rate in order to make it more expensive for another line to get the ties. Subject further discussed. (599) Often consulted competitors about rates, but not always. (601) Has had no consultation with Santa Fe officials with reference to the movement or division of traffic.

Rate changes.

(601) J. ROSS CLARK.

Clark.

Testimony given before Interstate Commerce Commission, February 7, 1907, in the city of Los Angeles, Cal.

Director and Second Vice-President of the San Pedro road. Has resided in Los Angeles since 1892. (602) Previously interested in banking, mining, etc., in Montana, and the manufacture of beet sugar at Los Angeles. San Pedro incorporated March, 1901. Prior to that time, from 1900, witness was interested in the Los Angeles Terminal Railway, running from Los Angeles to three points, namely, East San Pedro, Pasadena and Glendale, with a mileage of about fifty miles. The main line ran from Los Angeles to San Pedro, a distance of 27 miles. (603) The Company had land holdings at San Pedro of about 1,500 acres on the east side of the inner harbor, and owned a considerable harbor frontage, about fifty per cent. of the entire frontage on the inner harbor. Witness didn't know what percentage of the total frontage the S. P. owned. Witness and his brother, Senator W. A. Clark, bought a half interest in the Terminal Co., which at that time was owned by St. Louis people, about July, 1900.

Los Angeles. 2nd Vice Pres't., San Pedro.

Properties owned prior to organization of San Pedro.

(604) It was the following year that the Clarks definitely determined to make something more than a local proposition out of the Terminal Company, and build the Salt Lake line. In this enterprise, the same St. Louis people were interested with the Clarks. Kearns, of Salt Lake, joined them. Started surveys very soon after incorporating San Pedro Company. The first thing done was to reconstruct the line between Los Angeles and San Pedro. (605) First surveys made from Hobart Junction to the east and soon after surveyors put in the field in Utah, from Salt Lake west. Witness

Building of San Pedro line

doesn't think that the surveys were ever made clear through. Ran a line from Salt Lake to Lynn Junction, about 116 miles west. Skipped quite a piece of territory, and went down to Meadow Valley Wash, a canyon in the State of Nevada. A survey was made through that canyon, where we had considerable trouble with opponents, namely, the Oregon Short Line. There was an old grade from Uvada to Caliente, 42 miles, partly through the canyon, and a partially constructed grade from Caliente to Pioche. (606) They were built about 1889 or 1890, and connected with the Utah and Pacific at Uvada. The latter ran from Milford to the Utah state line. The grades had been sold for taxes, and the San Pedro people thought abandoned. We bought up tax title in one case, but in subsequent litigation we were defeated. Next surveyed from Caliente west, through the continuation of the Meadow Valley Wash, which is rather a rough canyon, and had trouble again with the O. S. L., or its subsidiary, the Utah, Nevada & California Company. Trouble was in getting maps approved in U. S. Land Office. There was more litigation, but the matter was never finally judicially determined. (607) This canyon was the only practicable route from Salt Lake to Los Angeles. If the Oregon Short Line had been able to control that canyon, witness didn't think his line would ever have been built.

O. S. L. grade.

Defeated in tax litigation.

Canyon only practicable route.

(608-609) The Utah, Nevada & California R. R. Co. were on the ground and made their surveys first. The surveying crews of the Oregon Short Line came into the canyon probably two or three weeks before the Clark people. The latter's intention to build a line had, however, been a matter of public notoriety for some months before that. The Clark-Harriman contract of July 9, 1902, was the result of negotiations lasting six or eight months, at least. At the time of making the contract, the line from San Pedro to Riverside was just about completed, and the Clarks had made a survey from Riverside on, and the surveyors were out on the desert. California Improvement Company was a holding corporation, of Illinois, and was controlled by the St. Louis people. It held the stock of the Terminal Company. Senator Clark and associates at the time of making the contract held seventy per cent. of the California Improvement Company's stock; remainder held by St. Louis people.

O. S. L. surveying crews on the ground first.

Contract of July 9, 1902.

Auxiliary companies.

(610) The Empire Construction Company was a Utah corporation, whose stock was held by practically the same people. Organized to build the San Pedro road. The Los Angeles Terminal Land Co. was a corporation that owned the terminals for the Salt Lake road at East San Pedro. Its stock was held by the California Improvement Company.

(611) All the holdings of the Terminal Company and the Land Company were transferred to the Salt Lake road. It was intended that the eastern terminal should be at Salt Lake City. The Clarks expected when road was completed to interchange freight

at Salt Lake with the O. S. L. and Denver & Rio Grande. In the negotiations for the contract, witness thought Mr. Stubbs and Judge Cornish represented Harriman interests. (613) San Pedro uses S. P. track from Riverside Junction to Colton, and Santa Fe track from Colton to Daggett. Construction of its own line there abandoned as a matter of economy. An expensive country to build through. (616) Witness thought provision of contract limiting right to invade Short Line territory probably suggested by Harriman people. Senator Clark owned a controlling interest in the San Pedro at the time of making the contract.

Mr. Stubbs and Judge Cornish represented Harriman interests.

(617) Witness thought suggestion of inserting reciprocal provision about invading territory of San Pedro Company came from Clark people. (619) At the time the last contracts were made, in June, 1903, the San Pedro road was not entirely completed. Work was being done beyond Daggett, and from Caliente west. At Caliente the road connected with the lines of the Utah Short Line that had been acquired under the joint deal. The old line was constructed down to that point. (621) The provision as to local traffic in Southern California let the San Pedro into that territory, and gave them access by interchange to 300 additional miles of railroad of the S. P. Co. The San Pedro Company could have gotten in there only at enormous expense, and after delay, while the S. P. lines were already constructed. The contract provisions applied only to local traffic, that is, traffic picked up at a Southern California point and laid down in the same state. (627) Witness didn't think there would have been any road built through the canyon unless this arrangement had been entered into between the conflicting interests there. One was in about as good position to fight as the other.

Operating arrangements between S. P. and San Pedro.

(628) The Meadow Valley Wash is probably 100 miles in length. In some places there is a broad valley, and in a few the Wash is narrowed down to a pass for a short distance. If both lines had been built through the canyon, they would have to cross each other about 26 times in not a great many miles. Those were the difficulties that were carefully considered. (629) It was a possible, but not a practicable thing, for both lines to have been built. (630) The Harriman people bought the Utah & Pacific, a 75-mile line, and built 45 miles down to Caliente as fast as they could, and provided a lot of material for further construction. They did this as soon as it was noised around that the Clarks were going to build the San Pedro. They had a portion constructed, and then they extended their lines from Uvada to Caliente, about 42 miles.

Two lines through Meadow Valley Wash impracticable.

(631) The Oregon Short Line and Utah Northern Railway Company owned a line extending southwardly from Salt Lake through Milford to the Utah state line, and a grade from there on through to the Meadow Valley Wash about 40 miles. After the foreclosure of the old mortgage of the company first named, the new Oregon Short Line Company bought it in, and they made an

O. S. L. grade.

arrangement by which the Utah & Pacific Co. acquired the right to build and operate the line from Milford to Uvada, and took an option from that Company to take over the property at their pleasure. This was in about 1898. It was in 1898 that the Utah & Pacific built their little line, and in 1900 the Short Line took it over. The first announcement of the possibility of building the San Pedro line was early in 1901. The forty-mile extension, however, was not begun until March, 1901. The first contract between Harriman and Clark was July, 1902. (632) The Harriman people surveyed their line across the Santa Fe about Ludlow, and connected with the S. P. at some point beyond Banning. Ludlow is 200 miles from Los Angeles. After leaving Las Vegas, about 1,250 miles west of Caliente, the two lines separated, the Clarks' running in a northwesterly direction, and the Harriman line pretty nearly west.

Utah & Pacific.

(633) It was here stipulated between the parties as follows:

STIPULATION.

Stipulation as to through rates in connection with steamship lines.

The S. P. Co. and the Navigation Co. made no through rates in connection with the lines of boats across the Pacific, except with the Portland & Asiatic, the Pacific Mail, the Toyo Kisen Kaisha, and the Occidental & Oriental, all lines mentioned in the testimony as managed by Mr. Schwerin. Any other lines of boats bringing in traffic terminating at San Francisco have to pay the San Francisco rate to the east, in addition to the steamship rate across the Pacific. The foregoing is true both of incoming and outgoing business. The interchange is covered by published through tariffs, and it is only with the steamship companies with whom through tariffs are published that business is interchanged upon an arrangement for a division of through rates.

D. & R. G. and San Pedro competition.

(635) The Denver & Rio Grande is the San Pedro's only competitor in western Utah. They compete as far south as Provo on their main line, about 40 miles from Salt Lake City, and also have a branch running down to Marysville, witness thought, about 125 miles southwest of Provo. They have another competitive line in the Tintic district.

(637) The San Pedro south from Lynn, all the way down as far as Milford, and as far as Provo, is competitive with the Rio Grande on wool and live stock. The two lines are about fifty miles apart, with a mountain range between. (639) The Harriman-Clark contract gave the San Pedro preference on Southern California business. This was the witness' understanding and the practice, notwithstanding the provision of Section 4, that nothing in the contract should be construed as limiting the rights or privileges or practices of the U. P. or Short Line in respect to interchange of traffic with each other and with the S. P. Co.

(642) Witness thought Section 4 of the contract was put in to secure the San Francisco business to the S. P. (643) San Pedro has a total mileage (including branches) of 1,000 miles, about half of which is in Utah.

Mileage of San Pedro.

(644) "COMMISSIONER LANE: Has there been any question arising, has any question arisen between your Company and the Union Pacific as to any rates in Utah? WITNESS: Not to my knowledge." (645) Mr. F. A. Wann (formerly of the Alton) has charge of the Traffic Department of the San Pedro road. He was employed by the brother of witness, Senator W. A. Clark. The Executive Committee was consulted about his appointment. (646) The General Manager of the San Pedro reports to a Committee consisting of Mr. Bancroft, the First Vice-President, and the witness. San Pedro was completed through about May, 1905. (647) The first train was run on the first of May, 1905. Prior to that the line had been under construction and had been operated on the two ends. No trains were operated from the west beyond Riverside until the line had been opened through.

San Pedro Committee.

(648-649) The line to Riverside was finished sometime in 1903. Largest traffic item out of Southern California is citrus fruit. San Pedro and Southern Pacific rate by way of Sacramento on citrus fruit is the same, although the San Pedro is 500 miles shorter. San Pedro uses coal on engines from Salt Lake City, even up to Las Vegas. Now, however, are dropping back to Caliente. Get coal off the Denver & Rio Grande, from the Utah Fuel Company. Have no coal on San Pedro line. Get oil from California. The oil at Los Angeles is delivered from local oil fields, and what is used beyond Daggett is delivered there by the Santa Fe. (650) Had no arrangement with the Harriman lines as to equipment. Have a three-year contract with the Armour Company covering 3,000 refrigerator cars. (651) San Pedro has no understanding with the S. P. that the latter will not take citrus fruit around by Sacramento. Witness doesn't know whether they take it that way or not. (652) No agreement by which this territory is in any way divided up as to the handling of fruit. Carry fruit in competition with the S. P. and Santa Fe. Rate over the three lines to Missouri River points is the same.

San Pedro rate on citrus fruits and S. P. rate via Sacramento, the same.

No fruit traffic agreement with S. P.

(653-654) San Pedro, when opened, reduced rates between Los Angeles and Utah common points, and vice versa, quite materially, but not on through business. The San Pedro can and does reduce rates on its line, in so far as it controls the rates, without the consent of any of its competitors. That would apply to Colorado points. The bulk of the citrus fruit goes to Missouri River and east. The Santa Fe is a competitor to those points and to Colorado common points, as well as the S. P.. The difference in distance from Los Angeles to Missouri River common points over the San Pedro and U. P. as compared with the Santa Fe is about 40 miles. Taking the San Pedro, the Denver & Rio Grande to Missouri River points and to Colorado common points, and to Chicago and the east, as compared with the Santa Fe, the latter is about 150 miles shorter. Neither Mr. Bancroft nor witness knows very much about what changes the San Pedro makes in rates, unless it is something very special. Mr. Wann attends to such matters with-

San Pedro reduced rates.

Mr. Wells makes rates.

out consulting the Executive Committee. (655) Mr. Wells, of the San Pedro, makes the rates. Mr. Stubbs has nothing to do with it. (661) The grades over the Sacramento route are much heavier than over the San Pedro, and the weather conditions over the latter are better.

(663) Some of the fruit and vegetable business carried by the San Pedro originates on the S. P. and some on its own line. There are about 12 packing houses on the San Pedro line for citrus fruit. (664) Witness thought that was about five per cent. (665) Rolling stock of Harriman lines not at home on San Pedro line. There are no steamship connections at San Pedro, except the coastwise steamers. (666) One Oriental tramp ship came in a few months ago, the only one witness knew of. San Pedro line participates in no trans-Pacific traffic. San Pedro line opened before really ready for business, and fruit trains at first made slow time. Later went through to Chicago in connection with the U. P. or Rio Grande in 5½ or 6 days. This schedule was abandoned, because expensive and dangerous. (668-669) Witness doesn't know the present schedule to Chicago. Rates from Los Angeles to Utah common points much reduced since construction of San Pedro road.

No steamship connections at San Pedro.

S. P. first reduced rates to Utah common points.

(670) S. P. reduced the rates first. The San Pedro had to follow, if they were to get any business. Physical conditions practically compelled the S. P. to retire from Utah so far as class business is concerned. The S. P. has reduced rates on commodities, but not on classes. (671) From Utah common points to Los Angeles, the S. P. compete with the San Pedro, but their line is 500 miles longer and their rates higher. Not energetic competitor. No understanding with the Harriman lines that the San Pedro is to do that business. Doesn't intend to reinstate the six-day citrus fruit service to Chicago. Too expensive.

San Pedro directors.

(672) Complainant's Exhibit 79 (Clark). Members of the Board of Directors San Pedro, July 1, 1903: W. A. Clark, J. Ross Clark, R. C. Kerens, Thomas Kearns, T. E. Gibbon, Reed Smoot, W. S. McCormick, E. W. Clark, R. W. Smith, F. K. Rule, E. O. Leech, T. F. Miller.

Gibbon.

(673) T. E. GIBBON.

Testimony given before Interstate Commerce Commission, February 8, 1907, in the city of Los Angeles.

Los Angeles. Former Gen. Counsel, San Pedro.

An attorney, who has lived in Los Angeles since 1888. Conducted the legal work of organizing the San Pedro. Its 3rd Vice-President and General Counsel at the time of organization, and up to first of December of last year. Also organized the Terminal Company, in 1891, and was the only Vice-President of that Company, and its ranking executive officer, as the President, Mr. George B. Leighton, Jr., lived in St. Louis. Mr. R. C. Kerens, of St. Louis, had the largest interest; Mr. George E. Leighton the second largest. The latter had been one of the Government Directors of the old U. P. None of the others were connected with the Harri-

man properties. (674-676) Describes lines of the Terminal Company, and ownership of the harbor frontage at San Pedro. S. P. had 3,000 feet, the rest was held by Terminal Company interest, a lumber company, and the Pacific Coast Steamship Company. (676) Pacific Coast Steamship Company is the only regular line of freight and passenger steamers that reaches the harbor of San Pedro. There are other lines of lumber steamers and lumber schooners, both steam and sail. (677) The Pacific Coast Steamship Company's boats ply from San Diego to San Francisco and beyond, witness thought. The Pacific Mail does not touch there. There is no trans-Pacific line there.

Harbor frontage at San Pedro.

(678) Various contracts were made for the construction of the San Pedro road.

(680) "Q. Now, Mr. Gibbon, are you able to testify from your recollection as to the extent of work that was done in laying out the line of your company, prior to the time of this contract of July 9, 1902, between Mr. Clark and Mr. Harriman? A. No sir. What I would say about that would be of the most general character. I could say that we had laid out our line in Southern California, and a good deal of it had been built, I think. It had not been completed, I am quite sure. We had done some surveying and had acquired some rights of way in Nevada, and I am quite sure there had been surveying done in Utah. But to what extent that went you would have to learn from the departments charged with that particular work."

Work done prior to contract of July 9, 1902.

(681) After the organization of the company, interviews were had with gentlemen representing connecting lines with the idea of learning what connections might be made for the company, etc. Witness personally had some interviews with General Palmer of the Rio Grande on this subject. Witness knew of no definite plans at that time which contemplated a division of ownership between his people and the Union Pacific, "but it may have been contemplated by any of the individuals—of course, I do not know as to that." Nothing of that kind was talked over. A good many years before the San Pedro undertook the construction of its line, a subsidiary company of the Union Pacific had undertaken the extension of the lines of that company through Nevada, with the idea of eventually going to Southern California. They had constructed a track to the Nevada-California state line and were preparing to operate it.

U. P.'s proposed line to Los Angeles.

(682) "Just a moment there, Mr. Gibbon. Can you tell me when that track was laid? A. No sir, I cannot, but it was not very long either way from the time that our Los Angeles Terminal Railway Company was organized, because that company was organized at that time with the understanding with the then management of the Southern Pacific that it should become the terminal at San Pedro of a—I mean the Union Pacific—of the Union Pacific line. Q. That was before my friend Judge Kelly piloted the Union Pacific through the receivership proceedings? A. It was

about that time that this line was constructed that I am speaking of now, leading down into Nevada and from the California-Nevada state line for some distance a roadbed had been constructed and a number of tunnels had been made." That grading was done and those tunnels constructed about the year 1890 or 1891. The grade was lying there unoccupied when the San Pedro people undertook the building of their road.

Old grade.

Conflict between O. S. L. and San Pedro.

The Oregon Short Line Company, or an auxiliary company called the Utah, Nevada and Colorado Railroad Company, undertook to occupy that grade. It became a race as to who should become possessed of it and these tunnels, and also the right of way which had previously been surveyed, (683) by the subsidiary company of the Union Pacific interests, some 10 or 11 years ago. The name of that old company was the Oregon Short Line & San Francisco Railway Company. This activity on the part of the Oregon Short Line did not take place until after the San Pedro had been organized and it was a matter of public notoriety that they proposed to build to Salt Lake. That right of way had been sold for taxes. We secured the tax title, to give us some right over it. Then the Oregon Short Line, or their subsidiary companies secured what rights remained, if any, in the company that originally located the right of way through Meadow Valley Wash. We secured some right of way from private parties. In fact, either side secured anything in the nature of legal rights that would give them any claim upon that strategic position. We were in there with our construction forces, and they went in there with theirs. We came very near to having some bloodshed, and there were some clashes that might have been very serious. Finally, each side got into court and got the other tied up on injunctions, and it seemed that each one had reached a point where neither could do any work there or accomplish anything. "COMMISSIONER LANE: At that time, Mr. Gibbon, how many miles of road did you have built down from Salt Lake City? WITNESS: None. COMMISSIONER LANE: And from Los Angeles towards Salt Lake City, how much did you have built? WITNESS: We were building the line towards Riverside at that time, sir—the San Pedro Company. COMMISSIONER LANE: How many miles did the Oregon Short Line have from Salt Lake City down towards the Meadow Valley Wash? WITNESS: Oh, I suppose, main line and branches, nearly 500 miles."

(684) No line had been constructed by the San Pedro at that time outside the State of California. At the trial of one of the injunction suits witness and Judge Kelly were chatting about the case "and I suggested to him that if we succeeded in securing a prior right through this Meadow Valley Wash, I was perfectly willing to admit that, under the United States law with reference to the occupancy of canyons or valleys of that kind, gorges, that they could force a way through there, and that I believed he would concede that if his people succeeded in getting the prior right we

could force a way through, the only thing being that the road that had the prior right would probably be crossed so many times by the other road going through that it would make it very difficult and dangerous for each side to operate through there; and assuming that they wanted to build, and, knowing as I did, that we wanted to build, it seemed to me, from a sensible point of view, that we had better try to get our people together and put through a joint corps of engineers to work in the building of the lines and getting the best possible location for two lines, so as to avoid a multiplicity of crossings, which, in a very treacherous place like that, would naturally be for one line to take a definite location and the other line to take what was left. We agreed that we would recommend that to our respective lines, and we did so, and there was a kind of protocol drawn up which took the form finally of a written stipulation, which was filed in the United States Court at Carson City, Nevada, where these cases were pending, as I recall now, which provided for the entrance in this Meadow Valley Wash of a joint surveying party who were to locate the two lines, and that joint surveying party did enter upon their work. Just how far it was prosecuted, I don't remember, but I know they did a considerable amount of surveying and location work, and located the two lines through there, or did a great deal of work in that direction. Pending, however, the final conclusion of that work and the vesting of the title in each of the contesting companies' interests, the arrangement was made which resulted finally in the joining of the two interests in the building of the one line of road."

Agreement for joint survey.

(685) At that time witness thought it was still the intention of his people to build a line through to Salt Lake. "Q. And so far as you are advised, or were advised at the time, it was claimed by the other interests that they were going to build a line through? A. Yes sir; and we were led to believe from various things we saw that they meant to do it. Q. And it would have resulted if you had not made this arrangement of an amicable passage through this canyon, and there had been no amalgamation—it would have resulted, in that event, in two lines of road through? A. Yes sir; it would have resulted in two lines of road. That is correct. And through a country that could not maintain one. Q. So far as the local business of the line is concerned? A. So far as the local business of the line is concerned it could not maintain one; no sir." Witness expected that the through business would be the San Pedro's main dependence, and at the time the scheme of building the road was inaugurated it expected to have through business from the eastern lines, the Rio Grande Western and the U. P.

Traffic could not maintain even one road.

Witness does not know what individual made the suggestion which led to the contract of July 9, 1902. He thought it was an outgrowth, undoubtedly, of the negotiations with reference to running the two lines through the Valley, "because, as the parties in interest met and talked over the thing, so far as my knowledge served me, and I was very intimately connected with that matter at

that time, it was a sort of mutual coming together of the minds of both sets of people, both interests; that they would better serve the interests of each by joining and building one line of road than to go on and build two lines, as they were doing." That was an absolutely unanimous feeling on the part of his people.

(686) In discussing the matter among themselves it became apparent that under existing conditions it would be necessary to choose between Union Pacific and Rio Grande interests in the making of connections, and it was concluded that the Union Pacific had more to offer than the other route. Mr. Gould in the meantime had purchased the Rio Grande Western and had control of that line as well as of the Rio Grande proper. The legal work upon the Clark-Harriman contract was done by Judge Kelly and witness. (687) They were working upon it for several months. From the time the truce was agreed upon and the engineers put in the field jointly and until July 9, 1902, negotiations were pending more or less during that time leading up to this agreement. The details of the contract were worked out largely by Mr. Ross Clark on one side and Judge Cornish on the other. Mr. Stubbs was there too. Then there was a reference to Senator Clark and Mr. Harriman when points were reached which required the decision of principals.

Negotiations for settlement.

(688) "Q. At the time you were inaugurating the road and building the line to Riverside was it contemplated that you would build this line through from Riverside to a point beyond El Cajon Pass? A. When we first began? Q. Yes. A. Yes, it was contemplated as a possibility although we had, I believe, among ourselves, discussed the possibility of negotiating trackage arrangements with the Santa Fe for the very obvious reason, of course, that a track over such a place as that is like a bridge, really, in railroading, and there is no— Q. No local traffic? A. No local traffic, no; and it would seem a pity to multiply companies, to build two lines where one might serve. Whether our head, the head of our Company, Senator Clark, or Mr. Ross Clark, his representative, had approached the Santa Fe Company with reference to that, or not, I don't know. But I know that the possibility of making that arrangement was discussed among ourselves."

Trackage arrangements with Santa Fe.

(689) Attention of witness is called to Article III of the contract of June 18, 1903. Witness represented the San Pedro Company when that contract was drafted. The last sentence of the article referring to changes made necessary in order to meet the rates, charges, classifications or tariffs of any other company or competing line of railroad, etc., was suggested by witness. "I think I suggested the addition of those words, for this reason: The whole article, it will be noted, provides for, and the preceding article, article II, to which it refers, provides for local rates. I will say that the word 'local' in railroading is used sometimes in a double sense; sometimes it is 'local' as to the system—local traffic; and at other times local traffic is given a territorial significance.

Article 3 of contract of June 18, 1903.

The term 'local traffic' or 'local freight' whatever it is, I affirm had a territorial significance here and was intended to refer to Southern California traffic. When this article was suggested Article III, providing for these rates remaining stationary, you know, without a change, etc., I suggested the adding of this phrase for the reason that, as we all know, sometimes local freight, that is, the rate, what is a local rate, may become complicated with an interstate rate by a shipment in a given locality becoming an interstate shipment; I wanted our company to be in the position, if that should ever arise at any time, not to be forced by this stipulation as to rates to in any way violate a law. Of course, it might never arise. But there are times, of course, when local rates become complicated with interstate rates, as I say, and then I wanted the company to have a clear and full right to so act with reference to those rates as not to become a violator of law in any way—in other words, to protect itself. That is why that clause was added." "Local freight"

(690) The clause above referred to originated with Mr. Gibbon as representing the San Pedro. "Q. What is there in that article that causes you to refer to California business? A. * * * Article II reads: 'In partial consideration of the said covenants and agreements of the said Southern Company contained in Article I hereof, said San Pedro Company hereby covenants and agrees with said Southern Pacific Company that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points upon its leased, owned or operated railroad, for the handling of local business thereon, the lawful rates, tariffs, classifications, and charges used by said Southern Company for the handling of any local business which may be the subject of competition between them.' Of course, the preceding parts of the contract and the physical facts were such as to make that necessarily confined to traffic in Southern California, because there is the only place where those conditions arose to which it could or did apply." Local business.

(691) "Q. You say that a rate from Los Angeles to Salt Lake City is not local to the San Pedro line? A. Yes sir, but I am telling you also that the word 'local' here is used in a territorial sense. Q. You say so, but I am asking you if there is anything in the contract that says so? A. There is this that indicates it very strongly. Section 1, the beginning of the contract, says: 'The said Southern Pacific Company undertakes and agrees to and with said San Pedro Company that it will interchange freight traffic in Southern California with said Pedro Company, to and from points south of the parallel of Mojave, California, in like manner and upon as favorable terms and conditions as said Southern Company at the same time interchanges traffic with the Southern California Railway Company, and that in the movement of such traffic, or the charge therefor, under similar circumstances and conditions, it will not discriminate in any respect in favor of any connecting line to the prejudice or disadvantage of said San Pedro Company;

but this shall not be construed as forbidding or restraining the said Southern Company from favoring its own lines as against the San Pedro lines, that is to say, lines of railroad owned, operated or controlled by said Southern Company. Section 2. The Southern Company, in respect of the traffic mentioned in Section 1 of this article, will join with said San Pedro Company and with said Oregon Short Line Railroad Company and said Union Pacific Railroad Company in forming through lines of freight service, and in through rates therefor upon agreed divisions of through rates for such service equal to the facilities, service and terms accorded by it to said Southern California Company on like kind of traffic. Article 2. In partial consideration of the said covenants and agreements of the said Southern Company contained in Article 1 hereof, said San Pedro Company hereby covenants and agrees with said Southern Company that it will upon the execution of this agreement, adopt, print, publish, and put in force at all points upon its leased, owned, or operated railroad, for the handling of local business (692) thereon, the lawful rates, tariffs, classifications, and charges, and so forth. You will notice that at the conclusion of Article 1 it reads to the Southern California Company purely and simply. Q. That is the consideration for the agreement in the other article? A. Yes. If the contract did not make it perfectly plain that that was all intended to make it refer to California, then it was the fault of the lawyers who drew it, because it was the intent of the parties. Mr. DUNNE: Was that the intent of the parties? WITNESS: Sir? Mr. DUNNE: You say that was the intent of the parties? WITNESS: Yes, sir, unquestionably. Nothing else was considered, for a moment."

Local business.

(692-693) There was no California statute similar to the Sherman Anti-Trust Law, and that provision of the contract was not inimical to any statute in California.

(693) This local traffic at the time the contract was made was the subject of a competitive struggle between the Santa Fe and the S. P. (694) This condition was not changed, to the witness' knowledge, while he was connected with the San Pedro. There was no arrangement between the three roads by which the competition between the Santa Fe and S. P. was affected. The Clark interests felt that in making the agreement with the S. P., a company whose lines ramify through all Southern California, it would make it possible to get the traffic from this locality without the necessity of building branch lines as feeders. (695) It is a fact, a result from the operation of competing roads, that rates will, generally speaking, be equalized. One road meets the rates of the other. Witness thought that on the kind of business originating in Southern California the service is quite as prime a factor as rates. Important that the traffic go east as soon as possible.

No arrangement by which competition between S. P. and Santa Fe was affected.

The physical superiority of the line between Los Angeles and Salt Lake would necessarily command for it a very large proportion of the traffic originating at the former point, not-

withstanding the interest of the U. P. in the San Pedro line. If there is actual competition on the part of the Santa Fe, the San Pedro route to Salt Lake City furnishes a link in the only road that can compete with that road in handling expeditiously the citrus fruit traffic, with a possible exception of the S. P. through El Paso. By the El Paso gateway the Harriman lines get 700 miles, by the San Pedro route the entire length of the U. P. and their half interest in the 800 miles of the San Pedro. (697) Witness doesn't think it would have been better to have had competition existing not only with the Santa Fe, but also with the Harriman lines. He stated that he certainly doubted the possibility of maintaining in a serviceable condition a line of railroad from Los Angeles to Salt Lake, built and operated as that road would have been built and operated, if it had had the competition of another line practically parallel, which would have had all the business of the U. P. San Pedro at the present time has joint through rates over the Denver & Rio Grande, just the same as over the U. P.

(698) The public had no evidence that it was necessary for the Harriman people to have a direct line from Salt Lake to California until the Clark line was projected. (699) On the citrus fruit business from Southern California you cannot make as good time over the Denver & Rio Grande with their heavy grades as you can over the U. P., with grades eliminated to a great extent. (700) The amount of freight handled on the respective lines would not cut much figure, because the citrus fruit business was run on a preferential schedule. Witness thought the schedule was lengthened now because congested on account of the impossibility of getting motive power. It was a question whether the road had motive power enough to move citrus fruit. It was very difficult to get even enough to move passenger traffic. (700-709) Purpose of Section 6 of contract between Short Line, U. P. and San Pedro, Miller's Exhibit 41, discussed.

(709) R. E. WELLS.

Wells.

Testimony given before Interstate Commerce Commission, February 8, 1907, in the city of Los Angeles.

Los Angeles. Gen. Manager, Salt Lake road.

For six years General Manager of the Salt Lake road. Has resided at Los Angeles for six years, except for two years, when he was in Salt Lake. (710) When he first became General Manager there was nothing but the old Terminal Line. It carried lumber chiefly, bringing it in from San Pedro to Los Angeles. Fruit was moved over the Glendale Branch, and turned over either to the S. P. or Santa Fe at Los Angeles. Moved to Salt Lake in 1903, just before the San Pedro took over the Oregon Short Line's road south of Salt Lake. Up to July, 1903, the lines in Utah were operated by the Short Line. (712) Mr. Wann acted for San Pedro in matters relating to division of rates between that line and Union Pacific.

No equipment agreement.

(714-715) No arrangement between the Harriman lines and the San Pedro with reference to loaning or leasing cars to each other. During construction and reconstruction work on San Pedro line, it lent some large wheel engines to the Harriman lines in return for a different type more suitable for construction purposes. Nothing of kind since road completed. Sometimes use the equipment of the Harriman lines, the same as they do that of other lines, on a per diem. (715-716) Present equipment of the road described somewhat in detail. (717) In the statement of number of cars San Pedro handled last year and this year, the word "local" is used to describe shipments to points west of the Missouri River. That is a generally accepted use of the term in the vicinity of Los Angeles. (718) In the year ending October 31, 1906, 2,330 carloads of fruit moved over the San Pedro. Total shipments over all three lines was about 25,000 carloads for the same period.

(719) Percentage of fruit cars delivered by the Atchison to the San Pedro for through shipment changed from 40 or 45 per cent. last year to 10 per cent. this year. Witness could not explain the reason for change. Vegetable business largely increased because it was solicited both by San Pedro solicitors and by Mr. Munroe, Freight Traffic Manager of the U. P. Mr. McCormick, the Asst. Traffic Manager of the Harriman lines, was with him. (721) Vegetable traffic was delivered to the San Pedro off the tracks of the S. P., 1,100 cars from November 1, 1906, to February 3, 1907. Celery, which constitutes the bulk of the business, comes from about forty miles south of Los Angeles. (722) Taking the San Pedro line, about 80 or 90 per cent. of the fruit cars are returned empty. An attempt is made to return them loaded. When they come back loaded, they contain merchandise and packing house products. Over the San Pedro the greater part of the tonnage moves east, so that the equipment must return empty.

Return of empty equipment.

6½-day trains.

(723) Armour cars are paid for by the mile. (724) Trains were run to Chicago in six or six and a half days. The San Pedro turned the trains over to the Rio Grande at Provo and Salt Lake. By the Rio Grande they were delivered to the Burlington. (725) This was in January, 1906. The S. P. and the Santa Fe protested against these six-day trains, but they were not taken off in deference to their requests. "We ran it to the end of the chapter, as long as our road was in condition to run it." They were not run long after the protests.

(726) The fast trains ran during January and February. The protests were made about the time the first train reached Chicago. Six-day trains have not been started up again, because the bad times on the San Pedro road are not yet over. (727) San Pedro has to fight for business, and there is the liveliest competition for every pound it gets. Their solicitors work against the S. P. and Santa Fe. There is a U. P. solicitor at Los Angeles, who solicits for the San Pedro continually as against the S. P. and Santa Fe. San Pedro is not now in a worse physical condition than when it

San Pedro has to fight for business.

ran the fast trains. (728) Fast trains not run now because San Pedro has less available motive power. In other words, less out of the shops. (729) Complainant's Exhibit 80, table showing carloads of citrus fruit handled during season of 1905-6 and 1906-7, respectively, by the three competing roads.

(730) THOMAS H. PHILLIPS.

Phillips.

Testimony given before Interstate Commerce Commission, February 8, 1907, in city of Los Angeles.

Los Angeles. Traffic Manager, California Citrus Union.

Traffic Manager of the California Citrus Union and of the Earl Fruit Company. His shipments comprise about twenty per cent of the Southern California output. Ships over all three roads. The California Citrus Union shipped about 175 cars over the San Pedro. Takes about 12½ days to Chicago by the San Pedro, and 13 days by the Santa Fe. Last year they made on the S. P. via El Paso and the Rock Island, six days to Kansas City, and 7½ to Chicago. There were some that took longer, but they made that time pretty regularly for quite a long while. Do not move fruit shipments to the east by way of Sacramento now. (731) Everything that goes by northern gateway goes San Pedro. The Citrus Union is an exception to the other packers, in that more of their warehouses are on the S. P. tracks than on any other tracks. The fruits that go by the Salt Lake route are from the packing houses on the San Pedro and S. P. The rate from here to Chicago and eastern points on oranges is $1.25 per hundred pounds, 90 cents a box. On lemons, $1 per hundred pounds. Prior to becoming Traffic Manager of the Citrus Union, witness was in the railroad business 22 years, with the U. P. 13 years, the Nav. Co. 4 years, the Canadian Pacific one year, the C. M. & St. Paul one year, and the S. P. about four years—in the Traffic Dept. Don't know why there should be a lower rate on lemons than on oranges. Has been in all seasons, and is called an emergency rate. Lemons are harder to carry than oranges, because they are more perishable.

California fruit shipments.

(732) Lemons were being imported from Sicily. Several years ago they were largely imported, but the California lemon is now getting the upper hand. I judge that is the reason this emergency rate was made. Witness has not been able to obtain sufficient cars this year to get fruit to market. Between 2,000 and 3,000 cars short at present. Have had most difficulty with the S. P. Less with the Santa Fe and Salt Lake. Less difficulty with the Santa Fe than the others. (733) The result of the shortage is a very great loss. By reason of car shortages have had to haul by team from packing houses on the S. P. to the Santa Fe and vice versa. Representatives of the S. P. have not made any objection this season to oranges going over the San Pedro. Last year they did. Heretofore witness shipped practically all fruit via El Paso, because the best service was that way until the present season. Mr. Graham, the S. P. agent, called on witness this year, and stated that after March 1st he expected to get business the same as before.

Shortage of cars.

El Paso route.

(734) One train over the San Pedro made as low time as 5½ days to Chicago. After the decision of the routing case by the Supreme Court, the service seemed to drop off. It may have been coincidence. (735-736) Witness is sending shipments by El Paso now. Ships two days in the week by the S. P., El Paso and the Rock Island, two days in the week by the S. P., Texas & Pacific, and M. K. & T., and two days in the week by the San Pedro. Bulk of the business would go by El Paso, but on account of the abnormal car conditions at present, witness was routing wherever he could get cars. Twice as much would normally go by El Paso. Witness has 49 packing houses on the S. P., 42 on the Santa Fe, and three on the San Pedro. S. P. notified witness until further notice not to pick oranges. That was a question of car supply.

Woodford.

(736) B. A. WOODFORD.

Testimony given before Interstate Commerce Commission, February 8, 1907, in the city of Los Angeles.

Los Angeles. Gen. Manager, California &c Fruit Exchange.

Routing of fruit traffic.

General Manager of the California Fruit Growers Exchange. Has resided in Southern California eighteen years, and engaged in the shipping of fruit for thirteen years. Shipped about 47 per cent. of the fruit crop last year. Thinks he will ship more this year. Ships over all the lines. The location of the packing houses largely divides the shipments; not always. Shipments to Seattle or Portland, although on the Santa Fe, would go over the S. P.; also if the Santa Fe had larger quantities of fruit than they had facilities for. (737) Very seldom anything that originates on the S. P. goes by the Santa Fe. Has four or five packing houses on the Santa Fe out of probably about 80 houses. Last year thinks that the San Pedro had about ten per cent., and the Santa Fe and S. P. each about 45 per cent. of the entire Southern California fruit business. Shipments over the Salt Lake road originated on all three lines. Since Mr. Monroe was at Los Angeles, soliciting for the Salt Lake and U. P., witness has shipped very little that way. His shipments have gone largely by the Santa Fe and El Paso, because of climatic conditions. Doesn't begin to move fruit through the Ogden gateway until the 1st of March. Thinks about 60 per cent. of the fruit that is packed in warehouses originates on the Santa Fe.

Rates.

(738) Freight rates on oranges have been the same about twenty years. Has been increased 2-70 by reason of change from 70 to 72 pounds in the size of boxes. That change occurred seven or eight years ago. Rate on lemons was given as a protective tariff to encourage the industry. Witness, as a grower, thought the orange rate too high. (739) Celery rate to Cleveland, Ohio, is $1.08 per hundred, and the center of distribution of his citrus fruits is somewhat west of Cleveland, and the flat rate all over that country is $1.25. Celery moves entirely under ice, and a few of the oranges move under ventilation, without ice. This year the shipments via El Paso reach Chicago about the ninth day from loading;

recently, via the Santa Fe, about eleven days. (740) Very few oranges from the S. P. packing houses move over the Santa Fe, but the reverse is frequently true.

(741) EDWARD H. HARRIMAN.

Harriman.

Testimony given before Interstate Commerce Commission, February 25, 1907, in the city of New York.

New York. Head of Harriman lines.

President of Union Pacific Railroad; Chairman of its Executive Committee; President of the Southern Pacific Company, Oregon Short Line and the Navigation Company; Chairman of the Executive Committee of the Southern Pacific. Took the last named position shortly after Union Pacific acquired Southern Pacific stock. Has acted as Chairman of the Executive Committee since that time, and as President since retirement of Mr. Hayes.

Purpose of U. P. convertible bond issue.

"Q. So that we may not duplicate things that have been put in before, I will ask you in a general way, if about January, 1901, or during the winter of 1901, the Union Pacific Railroad Company issued or provided for the issue of $100,000,000.00 of convertible bonds for the purpose of acquiring stocks in other railway companies? A. Well, I don't think that is hardly the way to put it. We issued $100,000,000.00 of convertible bonds primarily to pay for the Southern Pacific which had been purchased first, not generally to purchase the securities of other railroads."

$40,000,000.00 of these bonds were sold to Kuhn, Loeb and Company, to pay for the first 750,000 shares of the stock of the Southern Pacific. About $61,000,000.00 of these bonds were used to buy Northern Pacific stock. Has no doubt that the other $27,000,000.00 invested in Northern Pacific stock, was furnished by the Oregon Short Line.

O. S. L. participating and refunding bonds.

(742) That $100,000,000.00 of bonds has practically all been converted into Union Pacific common stock. Oregon Short Line, about July, 1902, authorized an issue of $100,000,000.00 of participating bonds, and in 1905 issued its refunding bonds to take up the participating bonds. $100,000,000.00 of the refunding bonds were authorized. (743) $45,000,000.00 of the refunding bonds were sold to the public. The balance, $55,000,000.00, is owned by the Union Pacific. There is about $127,000,000.00 of either stocks or bonds in existence somewhere, the proceeds of which were used to pay for Southern Pacific and Northern Pacific. After that the Short Line bought $15,000,000.00 par value of the Southern Pacific, in addition to its $75,000,000.00.

Advances for improvement of S. P.

(744) After that it bought $18,000,000.00 of preferred stock, issued pro rata to stockholders. When we bought the Southern Pacific, we advanced to it, to improve its property, about $18,000,000.00 or $20,000,000.00. That was repaid by the Southern Pacific when it issued its preferred stock. Whether we issued these refunding bonds to advance that money to the Southern Pacific, or not, witness could not tell. (745) $40,000,000.00 of convertible bonds were used to pay for Southern Pacific stock; the other $60,-

000,000.00 were held for the purposes of the corporation. It was not specifically issued to pay for Northern Pacific and Southern Pacific. We had not in mind the question of the purchase of stock in other railway companies. We had in mind simply the purpose of acquiring Southern Pacific stock and afterwards of acquiring Northern Pacific stock.

Cost of stocks.

(746-747) Harriman Exhibit No. 2, being Statement dated February 13, 1907, showing dates of stocks purchased since last annual report, June 30th, 1906, to date, and amounts paid therefor. From this exhibit it appears that the cost to Union Pacific and Short Line Companies of stocks acquired since July 1st, 1906, amounts to approximately $131,000,000.00.

N. P. stock purchase.

(748) As the result of Northern Pacific purchases, Union Pacific had $82,000,000.00 of Northern Pacific securities stock at cost of about $79,000,000.00. Were forced to take for that, Northern Pacific and Great Northern stock. At that time the stocks so forced upon Union Pacific were worth in the market about $100,000,000.00. In the meantime had subscribed to three millions of Great Northern stock offered to stockholders, making total investment in Northern lines of about $82,000,000.00. Stocks returned were worth in the market about $100,000,000.00. Held those stocks until they were worth from $145,000,000.00 to $150,000,000.00. Sold part of it for $116,000,000.00. "We re-invested that in securities listed here other than Baltimore and Ohio, at a cost of about $85,000,000.00. We have on hand remaining in the treasury of the Union Pacific, or the Oregon Short Line, Northern Pacific and Great Northern stock at the present market value of about $30,000,000.00. So that would make, with $116,000,000.00 of the value sold and with that we have on hand, about $146,000,000.00. The Baltimore and Ohio stock purchase has not to be paid for until March and September. * * Now, the difference between the cost of the other stocks, $85,000,000.00, and the $116,000,000.00, already realized, is about $31,000,000.00. The stock of the Great Northern and the Northern Pacific we still have on hand. If sold at the present prices, would make that $61,000,000.00 received in excess of the amount already invested and paid for. * *

Investment stocks.

B. & O. stock purchase.

(749) "We have to pay for Baltimore and Ohio $45,000,000.00. * * So that the proceeds of the Northern Pacific and the Great Northern would realize something like $17,000,000.00 in excess of the cost of all the securities purchased; and the income from those securities instead of being as it was in the case of the Great Northern and Northern Pacific, about three million and a quarter or three million and a half, will approximate six million and a half dollars. So that if we had held Great Northern and Northern Pacific we would have an investment realizing less than three million and a half dollars, and the market value would have been reduced very much more than the eleven or ten million which you refer to as the difference between the market price of the securities and the market price of the Great Northern and Northern Pacific."

If Northern Pacific and Great Northern maintain their present market price, witness estimates the profits in that at about $61,000,000.00. "We had this investment in securities. The one hundred million of stock was issued for the purpose of paying for those investments. We realized on those investments to the best advantage we could and re-invested in the securities which we thought were of the highest class and the most interest to the Union Pacific." It is a question of income. It is not always a question of capital or a question of value.

Profits on stock investments.

(750) Southern Pacific stock was purchased for the purpose of getting a dominating interest in the Southern Pacific Company. Mr. C. P. Huntington, who was the President of the Southern Pacific Company, died about six months prior to the purchase of Southern Pacific stock by the Union Pacific. Prior to his death, Mr. Huntington for many years had been in control of the Southern Pacific road. Did not buy a majority of the stock, as he presumed that the amount purchased would control the property as well as a majority of the stock. It was a dominating interest, and there was a very large outside interest as copartners. (751) Witness helped carry on negotiations for the purchase of the S. P. stock, but did not make the arrangement for the purchase. Witness did not think that all this stock was purchased from the Huntington estate. Testimony as to the 300,000 shares of Southern Pacific sold to Mr. William Rockefeller, March 30th, 1903, and repurchased November 12th, 1903. (752) Reasons for sale to Mr. Rockefeller.

Purpose of purchasing S. P. stock.

Sale of stock to Mr. Wm. Rockefeller.

(753-754) Same. (755) July 10, 1906, the .Oregon Short Line purchased $10,000,000.00 par value, Santa Fe Stock. Object was to invest some of the money that we had. Had arranged for representation on the Atchison Board. Had an interview with Mr. Ripley about obtaining a representation during 1904. (756) Had interviews with Morawetz and Ripley, mostly Morawetz. Substance of the interviews was, we were to establish a better relationship between all the railroads; that we should deal more frankly with each other, and not operate our lines to destroy each other, but to develop the territory served by each—even offered Mr. Morawetz a position on the Executive Committee of the Southern Pacific. They concluded to give certain individuals who were interested in the Union Pacific representation on the Atchison Board. To that end Mr. Rogers and Mr. Frick were elected. (757) Did not state to Mr. Ripley the amount of Santa Fe stock that witness and his associates had acquired. It had been acquired a long time before. Since acquiring of Santa Fe stock by these individuals, the Union Pacific or the Short Line as a Company had acquired $10,000,000.00 of this stock "as an investment, pure and simple, in the preferred stock."

Object in acquiring Santa Fe stock.

It was bought of Kuhn, Loeb & Company. (759) In interview with Mr. Ripley "I said myself and some of my associates had large interests in the Atchison Road, and there ought to be somebody in there who would properly represent not only our stock, but the

stockholders of the Atchison road, to the end that we might have a better understanding, and a franker dealing between our corporations, if you like. In other words, I had a common interest, I might say—an interest in Union Pacific and an interest in Atchison myself." (760) Messrs. Rogers and Frick were also prominent directors of Union Pacific. Their personality would make them prominent wherever they were.

They would represent the interest of the stockholders of the Company for which they were at the time acting, in case questions of conflict between the two companies arose. These two directors had nothing to do with the joint ownership of lines in Northern California, which was subsequently effected. (761) There never was any competition in the territory occupied by these joint lines. "The Santa Fe had interests up in Mendocino County, some 150 miles north of the terminus of the California and Northwestern road, which was owned by the Southern Pacific Company, and it was not a question of construction of parallel lines so much as it was a question of traffic or trackage arrangements between the lines north of the terminus of the California and Northwestern, and that road itself, whether a joint ownership was not better than a traffic or trackage alliance."

Joint ownership of lines in northern California.

San Pedro Railroad built jointly by Union Pacific and Mr. Clark, and is under their joint control. (762) Construction of San Pedro. Manner in which rates are fixed. (763) The $100,000,000.00 of convertible bonds were issued on the basis of the credit of the Union Pacific, "and it might have jeopardized the dividends on the Union Pacific stock itself. That is, we subrogated the stock to the bonds. If the Northern Pacific and the Southern Pacific had made no returns from their stock, no dividends, the income of the Union Pacific would have had to be used to pay the interest on those bonds, and to that extent it would have had to be deducted from the amount available to pay dividends on its stock." (764) Southern Pacific not a competing line, but a connecting line. "Q. You object to the word competing? A. I do, absolutely." Discussion as to the credit of the Union Pacific being based on its earnings. "If we had not had the power to buy the Southern Pacific with the credit of the Union Pacific, the territory of the Southern Pacific would have been ten years behind what it is now. (765) If we had acquired the Northern Pacific, the Northern Pacific territory would have been ten years ahead of what it is now." Discussion as to the necessity of a law permitting railroads to make traffic contracts between themselves under proper regulations.

San Pedro.

S. P. and U. P. connecting—not competing lines.

Advisability of traffic agreements.

(766) "The acquisition of the Southern Pacific by the Union Pacific, and the credit of the Union Pacific at that time enabled the Union Pacific to lend the Southern Pacific $20,000,000.00, or thereabouts, quickly, and make the improvements quickly. * * (767) These connections were made because of the benefit there would be in the connections themselves. The purpose was not to control the

rates of other competitors. "It was to enable us to go into the territory, that would enable us to open territory tributary to the Union Pacific and the Southern Pacific. For instance, in the Northern Pacific, if we had obtained control of the Northern Pacific, as we ought to, we would have opened the whole Washington and Oregon territory to the 15,000 or 16,000 miles of the Southern and Union Pacific, which we are now shut out of, and we have no joint rates—we are shut out of it absolutely, and the section served by those lines is shut off from direct communication and interchange of business with most of the territory north of the Columbia River."

To acquire more business.

Referring to his previous statement that the Northern Pacific Railroad would be ten years ahead of its present condition if he had got control of it, witness said:

(768) "I believe that the territory—that is, the rest of the country—the territory tributary to other railroads would have been opened to the use—for intercommunication I might say, to the territory served by the Northern Pacific. I believe the improvements on the Northern Pacific would have been more drastic, that their equipment and motive power would have been increased more rapidly, and I believe, more intelligently. * * * I am told now that the Northern Pacific has got—is unable to move the traffic tributary to it, and that a large part of its motive power— excuse me, not a large part of its motive power, but a considerable part of its motive power is out of service, because of not being in proper condition. Q. Well, there is a good deal of blockade of freight all over the country, isn't there? * * * A. I have no doubt there is some freight congestion. * * * Q. Then I judge if you think the Union Pacific has been better managed—and I have no doubt it has been well managed—that it has given better service and at better rates. A. No, I will say this, that it has developed its lines quicker, and to better advantage than the other lines north of it or south of it.

N. P. improvements would have been more drastic.

* * * The traffic of the Union Pacific and the Southern Pacific is more diversified than the lines north or between them; in other words, the commodities carried by the Union Pacific are of a higher class than those carried by the Northern Pacific or the Great Northern. The figures I have in my mind now—I don't remember about the Northern Pacific, but I believe that nearly 75 per cent. of the traffic on the Great Northern is either the products of the mines or lumber, the products of the forest, and only a little over fifty per cent. of the commodities of the Union Pacific are of the same character; therefore, if the rate on the Union Pacific, the average rate is being computed, that ought to be taken into consideration."

U. P. and S. P. traffic more diversified.

(769) Discussion as to rate per ton per mile on Union Pacific Railroad. "Through 1900 and 1901, they were over a cent a ton a mile and 1.5 cents, and in 1906, .924 cent. Q. But they were higher in 1903 and 1904 than they were in 1906, were they not? A. Yes, they were higher in 1902, 1903 and 1904 than they were in 1906. You have 2,900 miles; I don't know what this refers to.

Rate per ton per mile on U. P.

There is only 1,800 miles in 1896, 1897 and 1898, and then it increases to 2,900 miles and 3,000 miles from 1900 on, so that you are including some of the Short Line with it. Q. I am not including the Short Line or the Oregon Navigation Company. A. Yes, but you take 1899, the rate on the Union Pacific, as you have it here for 2,848 miles, was 1.16 cents. Q. Yes. A. And in 1906, it was .924 cent. Q. Yes. A. In other words, it was reduced from more than a cent a ton a mile to less than a cent a ton a mile." The rate had increased after 1896. "Well, you can makes figures appear any way you please, but in 1899 is the year you begin with 2,800 miles of road; compare that (770) with 1906 and it shows about fifteen per cent. higher in 1899 than in 1906. That may have changed also by the commodities carried, whether they were a higher class of commodity, or a low class of commodity." The inclusion of branch lines in the statistics would account for the difference in the rate per ton per mile, as the rates on branch lines are higher than on the main line. Discussion as to the rate per ton per mile on the Southern Pacific. In 1901, the rate was .932 of a cent. "The next year they went to .925 of a cent. * * The next year they went to .888, and the next year to .898, and then the next year they went up to over a cent, and the next year it was 1.10 cents. Now there are additions there, a couple of hundred miles of road added to it; those are probably branch lines. You cannot tell whether that was because of the increase in high-class commodities. We have had a very large increase in the shipment of fast trains carrying fruit. * * * Those are matters which you have got to consider; you have got to take in the class of business that one road does in comparing it with either former years, or with the traffic of other roads."

Rate per ton per mile on S. P.

(771) "Q. Now, is it not a fact that the Union Pacific, controlling the Southern Pacific, the same management, the same control, the same traffic official, president, boards of directors, the same stock ownership to the extent of forty-five per cent. of it, that all inducement to competition has been taken away, and the rates have been increased? A. I think not." Consolidation or joint ownership in the same interest does not necessarily tend to stiffen the rates or put them up.

U. P. control of S. P. has not destroyed competition.

(772) Discussion as to the rate per ton per mile on various railroads. If the Union Pacific could have some of the lumber carried by the Northern Pacific, that they cannot carry themselves, the Union Pacific would show an average rate much less than it does now. The Northern Pacific is "carrying more lumber on long hauls, from Washington to the markets in the Eastern States or Middle States, I might say, and if we could get some of that traffic which we hope to get and would have gotten if we had obtained control of the Northern Pacific, we would have opened our territory to those products and the rates on those would have been materially less than the higher class traffic we now carry, and to

Rate per ton per mile on various railroads.

that extent the average rate per ton per mile on the Union Pacific would have been reduced."

Witness does not believe that the rates on products of the farm on the Northern Pacific or Great Northern are less than they are on the Union Pacific. "Comr. Lane. Why cannot you get some of that Puget Sound Lumber? Witness. Because we have no lines running there. Comr. Lane. Why can't you make a joint rate with the Northern Pacific? Witness. Because they won't do it. Comr. Lane. Why can't you require it? Witness. That is the question I would like to have decided. Comr. Lane. There is power in the Commission to make a joint route and joint rate. (773) Witness. You might take it up, and I am quite interested, if the Commission have it on their minds, to open up the line as fast as possible, but they have closed the gateway in every instance. Comr. Lane. We found that the Sacramento gateway was closed from Portland around to Sacramento. Witness. Yes. Nobody would have ever thought any business would have been done at Sacramento around by the way of Portland. Comr. Lane. Well, there was some competitive business. Witness. It would not amount to anything, it would not have been a flea bite. Q. Take the Canadian Pacific. A. There you have got it again; you are in a different territory. What are the grain rates on the Canadian Pacific for like distances as compared with the Union Pacific? Q. I don't know. A. What are the conditions on the Canadian Pacific as compared with the Union Pacific? What do they have to pay for fuel and labor? Everything else is in a very different condition from any railroad in the United States. If we could have the same control of our management that the Canadian Pacific have, and the same cost for material and labor, I think we could probably operate our lines for less cost and less charge. Q. Well, will you name some transcontinental line which you consider a fair comparison with the Union Pacific on the question of rates? A. I do not believe there is one. Q. You think they are entitled to higher rates than any of them? A. No, I do not. I think they are charging the same rates, and possibly less, for like commodities.

Puget Sound gateway.

Sacramento gateway.

Canadian Pacific.

Rates on U. P. same or less than on other lines.

"Q. Is it not a fact that the Southern Pacific, and Santa Fe, and Union Pacific traffic is largely the same class? A. Not exactly the same. Q. Not exactly the same, but it is largely the same class? A. The Atchison has developed a very large business on lumber and coal on their eastern lines, more than we have, and more than the Southern Pacific has, but you will find that we charge no higher rate for the movement of the products of California to the markets in the East than the Atchison does. You will find we charge no higher for like commodities at any local points than the Atchison does, or Northern Pacific, or Great Northern. Q. Your rate per ton per mile is higher on your system than any one of them, and yours is the only one that has not been decreased; therefore I want to know whether it was due to superior management or whether it was— A. You have got in there, which is also

Classes of traffic.

U. P. rates no higher than Atchison, N. P. or G. N. rates.

shown by the Union Pacific, the fact that we have a lot of branch lines, and the rate on the branch line service is higher than on the main line. Q. I have not included it on the Southern Pacific. (774) A. The Southern Pacific has not so many branch lines; it has a higher class of traffic than the Atchison or any other transcontinental lines other than the Union Pacific.

"Mr. Lovett. In that connection, they both have a very much larger business? Witness. Yes, and their rates on their local business are relatively of the same parity with local rates on any other line. They could not be any higher, and possibly because we have developed more local business, our rates may be lower; I don't know; it may be our local rates as compared with local rates on other lines are lower, and that is the reason we have developed more local traffic."

Steamships Mongolia and Manchuria.

With regard to the ownership of the steamships Mongolia and Manchuria, witness said that the ships were taken in his name for the purpose of convenience when negotiations were made for their purchase, and that the rental for them was paid to the O. S. L. "They were partly completed, and Mr. Schwerin came to me with the statement that if the Pacific Mail was to take title to those ships, that I would have to give a personal guarantee. Now, I did not think that I was called upon to give a personal guarantee, and another thing, the Pacific Mail was largely in debt then for vessels already constructed, and so I decided to take the ships in my own name in order to hasten the closing of the negotiations and the changes in the boats which had to be made; they were partly constructed, and they had to be changed to suit our trade. They have always been held in the interest of the Oregon Short Line; the annual reports of the Oregon Short Line show their ownership and show the rental which was received for them." (775) Testimony as to the manner in which the rental for these ships was fixed. The ships were purchased without specific authority from the Short Line, but the matter was subsequently approved by that company's executive committee. Witness never had any personal interest in those ships. Inquiries as to the construction of a line into Portland by the Northern Pacific and Great Northern roads, known as the North Bank Route. (776) Same. The Northern Pacific and Great Northern, as far as they can, are obstructing witness in building from Portland up to Puget Sound, and also up the Columbia River; and witness is obstructing them in getting into Portland whenever he can. Witness' idea is not that one company shall keep out of the other's territory. "We shall do everything we can to develop territory adjacent to our lines, and so much so that where it is necessary we may join together."

Their rental.

Obstructions to Seattle line by N. P. and G. N.

"Q. It is in pursuance of that benevolent idea that you are endeavoring to prevent those lines getting into Portland? A. No; I object; it is a business purpose, pure and simple, to save unnecessary investment of capital. A double track line from Portland to Seattle and Tacoma could do four or five times the business that two single track roads would do, at a less cost. The public is in-

terested to that extent, that this business shall be conducted on lines at the least cost, and therefore eventually at the less charge. (777). Q. Then I will repeat my question: Is it in pursuance of this view of yours as to good sound policy in railroading, that you are endeavoring to prevent your rivals spending money to get into Portland? A. No. I think that is probably a sort of business arrangement we all have, to give us some consideration, in our attempt to reach Puget Sound territory. Q. That is the reason for it, is it, and up to this time it has been a matter of litigation? A. Yes; but we proceeded all right. I think we have come to a conclusion recently whereby we have got our terminals at Seattle and Tacoma—I don't know but we have at Portland. Q. And did the conclusion also include their going on there building the North Bank? A. That is very small, hardly worth considering."

Inquiries as to decrease in the ratio of operating expenses to gross earnings on the Union Pacific. (778) Same. Further inquiries as to the ratio per ton per mile on the Union Pacific. (779) Inquiries as to increase in transcontinental tariff. Witness states that the tariffs on all railroads from the Atlantic coast line to the Pacific are alike on all commodities. There are reasons why rates should have been increased. "In the first place, the Union Pacific and Southern Pacific have expended over $250,000,000.00 in new improvements on their lines, and the extensions and the acquisitions of terminals. * * * The management of the Union Pacific and Southern Pacific have not given their time to buying securities or selling securities. The purchase of securities was only incident—since the 1st of July—was only incident to the forced acquisition of Northern Pacific, of Great Northern, (780) and the rise in their market value that made it advisable and necessary for us to change that investment into other things. * * *

Justification of rate increase.

Purchase of securities only an incident to the forced acquisition of Northern Pacific.

"Since we have acquired these properties we have expended in improvements, additions, and extensions, over $250,000,000.00 that has been expended in the acquisition of terminal properties, the construction of sidetracks, passing tracks, second tracks, reduction of grades, straightening of lines, elimination of curvature thereby, the purchase of equipment. The allied lines, Union Pacific and Southern Pacific, have purchased in that time over 50,000 freight cars, purchased nearly 1,200 passenger cars; they have purchased over 1,500 locomotives of higher capacity than former locomotives; they have rerailed about 7,500 miles of railroad, putting in over a million tons of rails of heavier weight—80 or 90 pounds to the yard; they have put in automatic block signals, safety signals upon 3,200 miles—more than any other railroad in the world, and they have got under construction, authorized and under construction, 1,500 miles more. Now, all these expenditures have to be given a great deal of thought and a great deal of time, and it does not leave much of the time of the management to the purpose of going into what you have been terming this buying and selling of securities. The result of their expenditures, largely made in the employ-

Expenditures for betterments on Harriman lines.

Results of expenditures.

ment of labor, purchase of material in sections of the country tributary to our own lines, has increased the volume of business in that territory, has employed labor, distributed money in that territory and increased the volume of business, which has largely added to the earnings of the allied lines, enabled the better conduct of the properties, has enabled the movement of larger traffic, quicker development of the territory, and therefore a less percentage of cost in moving the traffic than it would have been if the lines had been left approximately in the same condition that they were when we got them. Now, I will give you a little illustration here. The first thing that was done on the Union Pacific—the very first move made on the Union Pacific, on the lines between Cheyenne and Ogden, that was the mountain division, and if you had taken the trouble to read this little paper it will show—you have been brought up in a prairie country where everything is level. The important matter was for us to consider how we could get the best line through the Rocky Mountains, as a protective measure, as much as anything else, so that we could operate it to advantage and at the least cost, and permit more business to go over it. In the first place we altered—the whole thing I think was about 480 miles—and out of that 480 miles we rebuilt about half of it, practically went over 50 per cent. of (781) the whole line. We saved in distance about 30 miles out of the whole.

Shortening of line.

Reduction of grades and elimination of curves. 22 circles taken out.

"The maximum grade on the old line varied from 97.68 feet to the mile—75.3-72.22-68.6. On the reconstruction the grade was reduced to 43.3—that is our mountain grade. The maximum curvature was reduced from five to six degrees, from 1 to 1½ and 3 and 4 degrees. The total angle of degrees of the old line was over 11,000. On the new line was a little over 4,000. There was a saving of nearly 7,000 angles—degrees of angles, or that would be really 22 circles; that is, the trains were saved going around 22 times in making that distance. I think that is about all. That is the first thing that we did. Those improvements, which cost all these millions of dollars, have enabled us to develop a larger traffic, permit a greater traffic to go over those lines, and to reduce the percentage of the cost of operation.

U. P.-S. P. improvements excel all others.

"Q. Well, now, Mr. Harriman, that condition, to a greater or less extent, has been going on, or that change, rather, on all of the American railroads. A. No, sir, it has not; not to that extent. Q. Haven't every one of them spent millions in improvements? A. They are now, but they have not done it as quick as we did. Q. Didn't they commence to spend them immediately after the panic of 1896? A. Not so drastic. Q. The Pennsylvania? A. The Pennsylvania has, but if it had begun in 1896 with the drastic expenditures it is now making, it would not have suffered as it has in the last four or five years. Q. Did not the St. Paul and Northwestern? A. Not to such an extent. Q. The Northern Pacific and the Atchison? A. No, they have veneered. Q. No other railroads have improved as the Union Pacific has? A. No, sir; not one in

the country. Q. None has been managed as well? A. I do not say that. I say none of them have had the enormous expenditure put on them."

(782) Witness thinks that under the reorganization plan of the Union Pacific $5,000,000.00 of cash were provided for betterments, and something over $10,000,000.00 in bonds set aside for the same purpose. The Pullman equipment was sold for about a million and a half of dollars and the proceeds invested in freight cars. A contract was made with the Pullman Company to supply that equipment themselves. The proceeds of the sales of lands and everything that could be gathered together in any way have been put into the improvements on the property.

Reorganization plans for betterments.

(783) "Q. Now, in addition to that— A. Whatever we have taken out of earnings we put into the property when we could have distributed it to the stockholders." Discussion as to the propriety of reducing rates on the Union Pacific. Witness states that there is very drastic competition in his territory. From 1893 or 1894 to 1898, 70 per cent. of the capital invested in railroads was paying no dividends, and it would be quite consistent that a 10 per cent. dividend should be distributed over an average of twenty years, from a railroad that had not received anything for ten years, and perhaps for five or six or eight years, received a fair compensation. (784) The Union Pacific does not pay 10 per cent. dividends from traffic. Its income was derived from traffic and from investments.

Earnings put in road.

70 per cent of capital invested in railroads paid no dividends from 1893 to 1898.

Discussion as to the statement of the net earnings of the Union Pacific, submitted to its Board of Directors in connection with the dividend declared on the 15th of August, 1906. Witness states that "every railroad has to have more than its actual earnings from which to pay a dividend. That is, it has to have something more. It can not distribute exactly what its net earnings are. If it did, it would soon go bankrupt. It has to have a surplus with which to maintain and improve its property and to provide a margin on which it can base a credit in case it has to borrow money in case of some extraordinary emergency. The old method of distributing whatever earnings they have is what (785) largely led to the bankruptcy or trouble of many of the lines."

Necessity of surplus.

The 10 per cent. dividend could not have been paid from the earnings of the road itself. 6 per cent. from that source was justified and 4 per cent. came from earnings other than traffic. (786) Witness thinks that "the Union Pacific stockholders are entitled to receive ten per cent. or fifteen per cent., if they can do it legitimately and properly, and give proper service to the territory reached by it or adjacent to it, and do it at no greater charge than that to similar territory in any other part of the country, and give better service than in any other part of the country. Q. Do you think the— A. I think the service rendered has something to do with the charge made. Q. That is, you think the service of the Union Pacific entitles it to a higher rate for hauling freight than the same

4 per cent of U. P. dividend came from earnings other than traffic.

U. P. does not get higher rates than other roads.

freight would be hauled for by other roads? A. It does not get a higher rate for hauling the same freight under relative conditions on other roads. Maybe it received lower rates. Now, if it has put itself in a condition where it can conduct that same traffic at less cost than other roads, it is entitled to the difference. If it sacrificed dividends, if it waited for dividends, it is entitled to receive them in the end. Q. I am trying to find out whether— A. You are trying to find out whether we ought not to reduce our rates on the Union Pacific? Q. Yes, sir. A. And if we did reduce our rates on the Union Pacific, it would create such a scamper all over this country, that you would not hear the end of it. Just as long as you can keep some of those lines solvent, (787) the Union Pacific will continue to earn all the money it is earning now. If you are going to throw some of them into bankruptcy and create chaos, you may reduce our earnings."

(789) Witness describes in detail how the 5 per cent. semi-annual dividend was declared, three per cent. from receipts from traffic and two per cent. from receipts from other sources. (790) Same. (791) "The total net earnings of money of our railroads do not exceed 5 or 6 per cent. on the total amount of capital invested." The return to the stockholders, in the case of many railroad companies, is due to the saving that is made by obtaining part of their capital by issuing low interest bearing bonds. The expenditures that have been made on the Union Pacific have increased so much in value that it could not be replaced there for anything like its capitalization. (792-794) Inquiries as to semi-annual dividend declared by the Southern Pacific on August 15, 1906.

U. P. not over-capitalized.

Increased rates to meet increased cost of labor and material.

(798) Witness thinks that all the transcontinental roads through a joint agency, that is who published their rate, made increases on a large number of commodities, both east and west, to meet conditions arising because of increased cost of labor and material, and increased cost of operation. Witness states his opinion as to amount railroad should be allowed to earn. (799-801) Same subject. (802-804) Combination of railroads and government regulation discussed.

Time when stocks paid assessments instead of dividends.

"From 1894, or from the panic of 1893 until 1898, I think you will find that about 70 per cent. of the securities of the railroads of this country were without dividends. * * * In 1898, if you will remember, it was just at the time in 1897 and 1898, when all these bankrupt properties were being reorganized and paying assessments instead of dividends. You talk about 10 per cent. dividend on the Union Pacific. When I took hold of the Union Pacific, we were just paying 10 per cent. assessment on our stock."

Morton.

(805) PAUL MORTON.

New York. Formerly Vice President, Santa Fe, in charge of traffic.

Lives in New York City. President, Equitable Insurance Company. In railroad business from 1872 to 1904. Was clerk, chief clerk, and assistant general freight agent of the C. B. & Q. with headquarters at Chicago; general passenger agent, general freight

agent, and afterwards, commencing in December, 1896, Vice-President, of the Atchison, Topeka & Santa Fe, and from that time until 1904 was head of its Traffic Department. (806) Is now a Director in the Atchison road. From 1890 to 1896 Vice-President of the Colorado Fuel Company, then being on the opposite side of the traffic question, as a shipper. Denver was the western point reached by the Burlington while witness was an officer of that company. Trans-continental traffic moved by way of Denver over the Burlington; also via Omaha. If it went the latter way, it was delivered to the U. P. If to Denver, it was delivered to the D. & R. G. Up to 1901, the roads running to Omaha, delivering to the U. P., were the Burlington, the Northwestern, the Rock Island, the Chicago, Milwaukee & St. Paul, the Wabash, the Missouri Pacific, and either then or subsequently, the Illinois Central. (807) A very large proportion of the traffic that reached Omaha went west over the U. P. Some of it may have gone on west to Denver, and then over the D. & R. G. When witness went with road the Atchison's eastern terminus was at Chicago, and its western at San Diego. Its westernmost station on the road to San Francisco was Mojave, about sixty odd miles east of Bakersfield, which is on the other side of the Tehachapi Mountains. At Mojave it connected with the S. P. for San Francisco and other points.

Transcontinental routes.

(808) Between 1897 and 1899 Atchison bought the San Francisco & San Joaquin Valley Railroad, running from Bakersfield to Point Richmond on San Francisco Bay, and made a contract with the S. P. for the joint use of its road over the Tehachapi Pass; a fifteen-year contract, witness thought; about 68 miles. In addition to the trans-continental lines already mentioned by witness there were, prior to 1901, the Northern Pacific, Great Northern and Canadian Pacific. They were all more or less in competition with each other. The line from Omaha to San Francisco, composed of the Union Pacific and Central Pacific was in competition with the Santa Fe, and on some but not all business was also in competition with the Sunset Route of the Southern Pacific. The competitive business was from this section of the country (New York). That competition extended as far west as Pittsburg, Cincinnati, and possibly in some instances as far as Chicago.

Completion of Santa Fe road to San Francisco.

Transcontinental competition.

Prior to 1901 the following routes to the Pacific Coast used a part of the Sunset line of the Southern Pacific (809), The Louisville & Nashville, the Queen & Crescent, the Illinois Central, and other lines reaching New Orleans. At El Paso connections were made with the Southern Pacific by the Texas & Pacific. Does not think the Rock Island was finished to El Paso at that time. The Atchison had a road down to Deming, which made a connection with the Southern Pacific at that point. The Rock Island built into El Paso before witness left the railroad service in 1896. The route made up of the Rock Island and the Southern Pacific engaged in trans-continental traffic. It was competitive with these other lines. The Rock Island also connected with the Union Pa-

Connections of Sunset line.

The competition was east of Ogden and El Paso.

The S. P. dominated the situation.

cific at Omaha, and with the D. & R. G. at Pueblo. "The competition generally considered among railroad men was east of Ogden and El Paso. The situation was to a very large degree dominated by the Southern Pacific. They controlled the rate making power to a very large degree, and all of these lines which published California rates did so under the general guidance and advice of the Southern Pacific Company, which was a connection of them all except the Atchison to Southern California." In the spring of 1901 the Union Pacific and the Southern Pacific were both competitors and connections.

Rates.

(810) The rates by the Sunset Route and via Ogden were supposed to be the same. At first there was a differential of ten per cent. less over the Sunset. On goods originating from Pittsburg east to the seaboard, the charge for the haul to New York was absorbed. The Morgan Line of steamers as far as Galveston was a competitor with the U. P. so far as securing business for Colorado was concerned. The competition was really east of the trunk lines, what are called the Iowa trunk lines, east of Missouri (River). The competition up to Galveston was competitive with lines east of the Missouri River. Business from Omaha into Colorado went by the Burlington or U. P.; from Galveston, by various lines. It might have been handled by the Atchison, which has a direct line from Galveston to Denver; or it might have been handled in connection with the M. K. & T. and the Colorado Southern; or in connection with the I. & G. N. and the Chicago, Rock Island & Pacific. Some of the traffic to Colorado formerly went by New Orleans.

Colorado traffic.

(811) From New Orleans it may have gone Southern Pacific up to some junction point in Texas with the Colorado Southern, or it may have gone by the Illinois Central to Kansas City, and west from there over the Union Pacific, the Burlington, the Rock Island or the Atchison. "Q. Take the territory west of Pittsburg, or take say Pittsburg common points and Cincinnati common points; what different ways would that traffic move to the coast? A. There were a great many routes by which it could have gone. From Pittsburg it could have gone via Chicago; it could have gone from there via St. Paul or via Council Bluffs or Omaha or via Denver or via Kansas City or via El Paso, or it could have gone south via New Orleans, and gone west from there; or it could have gone through St. Louis and out that way. There were a great many gateways for it to travel and through which traffic could have found an outlet. * * * It could have gone down the river to New Orleans and could have gone west from there, or it could have gone by rail." The U. P. didn't use the S. P. to get into Colorado. (812) As to that business, they were competitors. The Canadian Pacific was at one time an active competitor for business for San Francisco from all eastern portions of the U. S., and operated on a differential rate. Witness thought ten per cent. Took it to Vancouver, and from there by boat to San Francisco. Witness

Many different routes for traffic from Pittsburg to coast.

Canadian Pacific.

thought Northern Pacific had done a little business by boat communication with San Francisco. Business has been handled by the northern lines via boat connection with San Francisco; in very small amounts, however. Witness remembered one shipment of rails moving from Chicago by the Illinois Central to New Orleans, the Sunset route to San Francisco. (813) When the Santa Fe ended at Mojave and reached San Francisco over the lines of the Southern Pacific, witness considered that the Santa Fe was in active competition with the Southern Pacific and with the Union Pacific for trans-continental business. Divisions of the rates between the roads reaching the Pacific coast through the Ogden gateway were made soon after completion in the early seventies.

Rate divisions.

(814) As witness remembered, by the Chicago gateway, it was 22 per cent. east of Chicago, 78 per cent. to be divided west of Chicago, with a deduction for the Omaha bridge toll, which was an arbitrary, and may be some terminal charge at San Francisco. After that the lines east of Council Bluffs received 15 per cent. of the balance. Then there was another subdivision west of Omaha between the U. P. and the Central Pacific. Prior to 1901 the fruit traffic from Southern California moved over the Southern Pacific, which controlled the line via Ogden and the line via El Paso, and also over the Atchison road, which had its own line. All the lines east of Ogden and west of Chicago had soliciting agents out there endeavoring to secure the routing of traffic by way of Ogden. Prior to 1901 the Southern Pacific and Union Pacific maintained soliciting agents in the various large cities in the east. The function of a soliciting agent was to look after the welfare of that railroad, represent it and try to secure as much business for it as possible at the tariff rates, and in every way to be the agent of the company. The work included personal solicitation, settlements of claims, etc. All the transcontinental lines maintain offices in New York for that purpose now.

Soliciting agents.

(815) Panama Line, of which the Pacific Mail formed a part, was in 1901, a factor in the trans-continental traffic. Prior to 1901 there was emigrant passenger business from New York for the Pacific Ocean and intermediate regions that was competitive between the different lines. It was quite a large business. All the western lines participated in it,—the same ones that witness mentioned as having competed for freight business. The rates over the various lines to Colorado from here [New York] were identical.

Panama line.

(816) There was no competition in rates, but the competition was in service, and in attracting people's attention to the various lines. The business competitive between the Sunset route or the S. P., and its rail connections at New Orleans or Texas points, and thence to the coast on the one hand and the Union Pacific line on the other hand was large. Competition was chiefly east of Ogden. Witness always considered in Atchison's California business, Pacific coast business, that the connections of the U. P. and S. P. were more difficult to deal with as competitors than those lines proper. The Atchison's difficulties were with the connections of

No competition in rates.

U. P. competitors.

the S. P. more than the S. P. itself. One of these connections was the Union Pacific. "The Union Pacific had the D. & R. G. to compete with—its nearest competitor; then it had on the south the Texas & Pacific and the Rock Island from El Paso; and when it got as far as Denver it had the Burlington and the Missouri Pacific." New York common points means the points which take the New York rate, that is, one hundred per cent of the New York rate.

Purchase by Santa Fe of line to San Francisco.

(817) First connection with the Atchison road was in January, 1896. Then became Vice-President in charge of traffic. The western terminus of Atchison then at San Diego. It got this line to Mojave in 1897, '98 or '99. Atchison interchanged business there with the Southern Pacific before that. About 1898 purchased San Francisco & San Joaquin Valley R. R., which was finished from Stockton to Bakersfield, and Atchison completed it to Point Richmond on San Francisco Bay. At the same time made arrangements for the use of the S. P. line from Mojave to Bakersfield. Line to Point Richmond opened for transportation about May, 1899. (818) Prior to that time had no method of doing business to San Francisco, except in connection with the S. P. There was no other company, except the S. P., operating a line on the Pacific coast south of Portland while witness was Vice-President of the Atchison. "Q. The only competition for traffic to the Pacific coast south of Portland was between the Southern Pacific and the Atchison, and their connections, wasn't it? A. Yes, that is right. * * * Q. In the competition between the Sunset route of the Southern Pacific (and by that I mean the route via New Orleans and El Paso) and the Union Pacific, that you have testified about, do you not include among the lines engaging in that competition the lines east of the Missouri River? A. Only as connections."

Competition south of Portland.

Competition was chiefly east of Ogden and El Paso.

(819) With reference to Ogden and Sunset routes, witness said the traffic competed for was large. Does not think he said the competition was large. Competition chiefly east of Ogden and El Paso, and much more intense between the connections of the S. P. than with the S. P. so far as the Atchison's experience was concerned. Leaving out of consideration any possible line by way of Portland, it would be impossible for the U. P. to compete for any California business, except in connection with the S. P. "Q. No rate could be made lawful by any line, except the Atchison, to San Francisco, without the consent of the Southern Pacific Company? Mr. SEVERANCE: You mean all rail rates. Mr. LOVETT: I mean rail rates. (820) A. No; the rates actually were in the hands of the Southern Pacific Railroad. Q. It always controlled the rates to California except as against the Atchison, did it not, Mr. Morton? A. Yes sir. Q. And that was because it owned the line from Ogden or operated the line from Ogden to California points, and the Sunset route being the only line outside of the Atchison? A. They controlled the situation. They had the matter in their own hands. Q. Isn't it true, Mr. Morton, with

S. P. always controlled the rates to California except as against the Atchison.

respect to business to and from the Pacific coast and the Orient, the Union Pacific was absolutely without any rate-making power unless it be by way of Portland? A. Yes sir. * * * Q. So that there never was a time so long as you were connected with the Atchison when a railroad rate could be made to or from California by the Union Pacific or any other railroad company, except the Atchison, without the consent of the Southern Pacific? A. That is right. Any other published rate. Q. That is what I mean —an open, lawful rate. That the concurrence of the Southern Pacific— A. Was essential. (821) Q.—Was essential in any lawful rate that was made during that whole time, except by the Atchison? A. Yes sir."

The concurrence of the S. P. was essential.

(821) When the Burlington took traffic to Denver and delivered it to the D. & R. G., the latter could not send it to the Pacific coast, except by delivering it to the S. P. at Ogden. So with the Missouri Pacific or any other line. The traffic which witness said was large in volume and was competed for by the Southern Pacific and Union Pacific was the traffic that would move by way of Ogden and over the line of which the Southern Pacific was a part, on the one hand, and the Sunset Route of the Southern Pacific on the other. The concurrence of the Southern Pacific in the rates on which that traffic would move, at a lawful rate, was necessary. Doesn't think the U. P. ever made much of an attempt to carry traffic from the east to San Francisco by Portland. That route never bothered the Atchison any. If the U. P. got traffic to San Francisco that way, they could not get it into the interior of California either by using the S. P. or Atchison, and the route never was an important factor in the rate situation. Canadian Pacific tried to get traffic to San Francisco in the nineties. (822) There was an arbitration as to whether the Canadian Pacific should have a differential, and it was decided that there should be none. As a result, the Canadian Pacific practically withdrew. Doesn't think there was any profit in the business to the Canadian Pacific. The published rates by all the lines was the same. That is the general rule. No rates were ever published to the Pacific coast without first receiving the sanction of the S. P. and the Atchison, since the latter was a through line. They are generally regarded as the rate-making power so far as that territory is concerned. That is true today. Doesn't know of any change in the situation since 1901. The rates by the northern route are, of course, taken into consideration.

All the traffic going via El Paso or Ogden went over the S. P.

Portland route never an important factor.

S. P. and Atchison were the rate making power.

(823) The lines east of the Missouri River were soliciting transcontinental business during witness' connection with the Atchison, both in the eastern territory and on the Pacific Coast, and the Union Pacific, the D. & R. G., the Burlington, and even the trunk lines between Chicago and the Atlantic Seaboard were soliciting that business. The business was being solicited by all the lines between Chicago and the Missouri River, the Wabash, the Missouri Pacific, the Rock Island, the Illinois Central, the North-

The lines which were soliciting transcontinental business.

western, the St. Paul; they were the connections which witness stated he always found to be the most difficult factor. The Southern Pacific and Union Pacific might have differences among themselves in rate meetings as to the division of through rates, even though they were merely connecting lines. When such differences occur it does not necessarily follow that the lines are competitive. It may be that they are merely connecting lines. Divisions of through rates are always reached by agreement. This is a matter of negotiation.

Colorado traffic.

With reference to business to points in Colorado (824) witness assumed that it might have gone via Southern Pacific out as far as Houston, but does not think much of it moved that way. Thinks it went Texas & Pacific, although that business has all been transferred now to Galveston. Does not think much of it goes from New Orleans. The Texas Pacific was the short line to Colorado points—shorter than the Southern Pacific. Southern Pacific steamships first went to Galveston along about 1900. If the Colorado business was carried to New Orleans then the natural line for it to move over would be the Texas & Pacific to Fort Worth, then over the Fort Worth and Denver to Colorado points, or it might be turned over by the Texas & Pacific to some other line. Thinks the M. K. & T. handled some of it. Knows that the Rock Island handled some. They were all factors in the settlement of the matter. Does not think that the Southern Pacific ever had much to do with it. If the traffic moved from Galveston it could be handled by the Gulf, Colorado & Santa Fe or the M. K. & T. or the International Great Northern and their connections, or the Houston & Texas Central, controlled by the Southern Pacific. The Southern Pacific has never controlled any line into Colorado. The line that it controls from the Gulf does not extend north of Denison, Texas, or Fort Worth, Texas. The business from New Orleans to Colorado points could move very naturally to Kansas City and then over the Union Pacific, but witness did not know whether any moved that way or not. To move business that way from Galveston would be taking it out of its way.

(825) The traffic could be taken by the M. K. & T. to either Kansas City or Junction City, Kansas, and there turned over to the Union Pacific. There are several other lines by which the traffic could move to Kansas City and be interchanged with the Union Pacific there. The Union Pacific received as much compensation for hauling this traffic through the Kansas City gateway as it did through the Omaha gateway.

(826) When the rates are the same, the competition is in service and other things. Witness doesn't remember if U. P. ever took traffic to San Francisco via Portland. (827) The Morgan line of steamers were a factor in the Colorado business, but had to take care of the Mallory Line, their competitors. Witness has

an indistinct recollection of a pool on trans-continental business, and the U. P. was scrambling on one side and the S. P. on the other, but only as connections.

(828) In traffic meetings the U. P. and Sunset routes frequently competed with each other. Also competed through their soliciting and commercial agencies. Witness thinks they are now competing here in New York. Never was much competition in Chicago. Competed to some extent at Pittsburg. Also through the central states territory. Competition was largely between the connections of the U. P. and S. P.

Competition was largely between the connections of U. P. and S. P.

(829) Rates were changed by the Atchison and S. P. without the consent of the U. P. The latter was never much of a factor in making the through rate. Entirely dominated by the wishes of the S. P. as to both east and west bound business. Thinks divisions have remained substantially the same for thirty years, since the U. P. and S. P. were completed. Remembers trans-continental traffic meetings at which the U. P. was not represented.

U. P. never much of a factor in making through rates.

(830) One of the methods of securing business in the old days was by cutting rates without the knowledge of the other railroads. It was participated in by all the railroads doing business. That was done by railroads even where they had connections, where they would give up a part of their own division, part of the full rate. That was done by connections without expecting the roads controlling the situation to give up anything. "Q. And in that kind of competition it was possible for the Sunset Route to compete against the Union Pacific without the Southern Pacific figuring with the Union? A. Well, the Sunset Route occupied the same relations to all of the connections of the Ogden Line, the Central Pacific Line, that the Atchison did to the lines running west from Chicago. They had a line of their own through to New York. The Atchison had a line of its own through to Chicago, and with perfect good faith on the part of the Southern Pacific the connections east of Ogden might vary the rates, and the connections east of Ogden, including the connections east of Chicago, might vary the rates so far as the Sunset Line was concerned. To some extent it was a disadvantage to have a through line and not have wicked partners. Q. Yes, that is right. And the Union Pacific could vary its proportion of the through rate in order to get the business? That is what I mean? A. I mean not particularly the Union Pacific. I mean all of them." That competition was contrary to law. (831) That was in the old days when they were all doing something to get business in a manner which was not permitted by legal methods. The scramble for business east of Ogden all helped the S. P. in the end. In pooling arrangements for a division of the traffic or the revenue of the pool, contentions might arise between connecting as well as competing lines, the connecting lines fighting over the division. The S. P. owning its own line from

Rate cutting.

New York to California points, would naturally favor the route by which it could get the entire revenue as against that where it received only a portion. Any contention that the Union Pacific might have made in the traffic associations for a share of that traffic as against the Southern Pacific (832) would not be as against the Sunset Route but in connection with the route from Ogden to San Francisco, which was its only outlet to the Pacific. If the U. P. had attempted to use the Portland route to San Francisco as a club against the S. P., to force a larger division between it and the Central Pacific, the S. P. would have been in a much better position to retaliate by diverting its traffic to other lines as against the U. P. The U. P. thought that this course would be suicidal. The Atchison could have formed a line from San Francisco by San Diego and water, but never saw fit to do so. Never thought there was anything in it. The vast volume of traffic of the U. P. to the Pacific coast always has been and must necessarily be interchanged with the S. P. at Ogden, rather than by way of Portland. A large proportion of the east bound business in California consists of oranges, which could not be sent that way. The U. P., except the Portland route, has no way of getting to the Pacific coast without the S. P., while the latter could move its traffic either way without using the U. P. With regard to competition by service, the service over the Ogden route is much better than it was prior to 1901.

Vast volume of U. P. business for coast must be interchanged with S. P. at Ogden.

U. P., S. P. and Santa Fe improved.

(833) The service over all the lines hasn't improved, but the S. P., U. P. and Santa Fe have been particularly improved. The rates to the Pacific coast have been much affected by the clipper ships around the Horn at times, and also more or less by the Panama route. The Tehuantepec route opened since witness' railroad experience closed. Witness' prior testimony as to rate-making referred only to overland railroads. One reason why the matter was left to the Atchison and S. P. officials was that they were on the ground, and kept in touch with competition from everywhere. (834) Referring to witness' testimony, that it would be suicidal for the U. P. to endeavor to work business by Portland, Mr. Severance asked if it would not be a suicidal matter for the S. P. to make such extreme demands in the way of divisions as to force traffic in other directions, to which the witness replied: "I think their interests are mutual, are identical." Such extreme demands on the part of the S. P. would have the effect of throwing business to the Atchison and other lines. Shippers do not know about and are not interested in divisions of rates between railroads.

Hawley.

(835) EDWIN HAWLEY.

New York. Formerly Gen. Eastern Agent of S. P.

Lives in New York. Has for 42 years been engaged in railroad business in New York. Has been connected with the Chicago, Rock Island & Pacific, the Erie, the Ohio & Mississippi, the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, the Chicago, Burlington & Quincy, and the S. P. Now President of

the Iowa Central and the Minneapolis & St. Louis. Became connected with the S. P. February, 1883, as General Eastern Agent in charge of both freight and passenger traffic east of Mississippi River. Immediately prior to that time was the pool agent of the Milwaukee & St. Paul, and the Rock Island, the Northwestern and the Burlington. The "California Fast Freight Line" was the trade mark. The business of the California freight lines from New York went over any of the trunk lines in connection with the lines I have mentioned. That is, the trunk lines from here to Chicago, then the trunk lines witness has mentioned from Chicago to Council Bluffs, thence by Union and Central Pacific.

(836) Morgan Line established shortly after witness became connected with S. P., and was from the first run in connection with the S. P. Sunset route. Transcontinental lines west of the Missouri River competing for business to the Pacific coast were the U. P. the Atchison, the Texas & Pacific, the S. P., the Northern Pacific, the Great Northern, and the Canadian Pacific. Witness, when General Eastern Agent of the S. P., endeavored to move freight from New York common points via New Orleans, and as to business originating in Pittsburg or Cincinnati territory via New Orleans in connection with all rail lines. U. P.'s eastern agencies worked in competition with witness; also the Santa Fe and the other lines. (837) To a much smaller degree competition between the U. P. and Sunset route at times extended as far north as Portland. Sunset route handled to Oregon points, dry goods, high class freight; not in considerable quantities, however. Traffic moving to New York from Portland and common points consisted more particularly of hops, which came both over the U. P. and S. P. Rates on all rail lines and Sunset route were the same. There may have been exceptions, periodically on certain commodities. Class rates were the same. Canadian Pacific had a differential, which was terminated by arbitration.

Transcontinental lines west of Missouri River.

Business routed via New Orleans.

Hops.

(838) Witness worked business to Colorado common points and Utah common points, via the Morgan Line to New Orleans, thence over the H. & T. C. and the Colorado Southern; also at times in connection with the Rock Island. The H. & T. C. delivered to the S. P. Ran from Houston to Fort Worth. Reached Houston from New Orleans over the Morgan's Louisiana & Texas Railroad and Steamship Line. Rates to Utah common points not the same as to Colorado common points. S. P. rates to Colorado common points lower than all rail rates. As to that business S. P. competed with the U. P. (839) In reaching these Colorado points, U. P. didn't use the S. P. lines. Was also in competition with U. P. in reaching Utah common points. The latter didn't use the S. P. rails to reach those points, but at times the S. P. used the U. P. rails. Most of the traffic was routed by the S. P. over the Denver & Rio Grande, and the Rio Grande Western. This competition existed up to the time witness left the S. P. service. After 1901, U. P. and S. P. agencies pretty generally consolidated,

Colorado and Utah business.

except those at New York. Witness opposed the consolidation there. Consolidation eliminated competition to a very great extent.

(840) When rates are maintained, personal solicitation and correspondence are the methods usually adopted to secure business. The S. P. and U. P. actually competed for first class and emigrant passenger business to the coast. Sunset route's percentage of trans-continental business out of New York and common points up to Jan. 1, 1901, varied from 85 to 40 per cent. Witness thought Sunset route carried at one time as high as 50 per cent. of all the business originating in what is termed the "seaboard territory." (841) Seaboard territory included points east of Buffalo and Pittsburg. S. P. absorbed the charge to the coast. Covered generally all of New England. Thinks Norfolk was the southerly point. There were a few points east of Pittsburg which took Pittsburg rates. Sunset route didn't compete for that business via New York, but did by way of New Orleans for iron and steel products generally. Pittsburg business took the same rates via rail to New Orleans and on to the coast as it did via Omaha. There was a group of points, both east and west of Pittsburg, that reached the Pacific coast either by Cincinnati or Chicago. The rates were the same. Traffic could go either by Omaha or by New Orleans and Texas common points, on the same tariff. (842) That was competed for by the U. P. and S. P. Thinks competition extended as far west as the Mississippi River. The territory in Tennessee and Alabama, the southeastern territory, was competitive in the same way, between the same lines, at the same rates.

S. P. absorbed the charge.

(843) U. P., Omaha to Ogden, 1,003 miles; S. P., Ogden to San Francisco, 850. U. P. only worked the Ogden San Francisco route for Pacific coast business, and could not lawfully make a rate to or from California without the consent of the S. P. Witness, when connected with the S. P., endeavored to solicit business by the Sunset route, because the S. P. would get more revenue out of it that way. Atchison didn't compete much with the S. P. for Northern California business until they acquired the San Joaquin Valley road, but they did for Southern California. They were the only companies that had lines extending from the Pacific coast easterly as far as Ogden and El Paso. (844) The trunk lines to Chicago and the Missouri and Mississippi Rivers were struggling for business as against the Sunset route, and had to deliver the business either to the Atchion, S. P., or Texas & Pacific. In the latter case, it was delivered at El Paso to the S. P. Whoever got it, it had to be delivered eventually to the S. P. or Atchison. U. P. never worked Portland route on California business to any considerable extent. It is an impractical route in point of time, and could not distribute business in California without paying local rates. Moreover, the S. P. would have retaliated by diverting business at Ogden. The Sunset route to Portland was about 1,500 miles longer than the U. P. and O. S. L.

U. P. could not make rate without consent of S. P.

(845) About 5,000 miles one way, and 3,300 the other. Don't think the Sunset ever carried as much as three per cent. of the Portland business. Doesn't think the Canadian Pacific carried business to California for any great period. It tried to force recognition as a differential line, and failed. The disadvantage in point of time was too great. Witness understands S. P. still absorbs the rates from the seaboard territory to the same extent as before the acquisition by the U. P. (846) U. P. has practically no power to make transcontinental rates, independent of S. P. Merely a connecting line. Witness never attempted to move any of the business west of Pittsburg by way of the Morgan Line. Never moved any traffic from Pittsburg or the territory west, to Portland, by rail to New Orleans, thence over the S. P. The business to Colorado points moving by the Morgan Line to New Orleans went over the S. P. lines to Fort Worth, Texas (847) and thence over what was formerly the U. P., Denver & Gulf, to Denver. The latter line was controlled by the U. P. when witness first became connected with the S. P. Remained in its control until the receivership in 1893. During witness' connection with the S. P., the Morgan Line ran a boat in the cotton season to Galveston; one, and occasionally two, steamers a week. Since witness' connection ceased, a regular line is operated to that point. During the whole time, the Mallory Line was carrying business to Galveston for Colorado common points, and its principal connection was the Atchison system. The Atchison, which owned the line at that time from Chicago to Colorado—Pueblo—worked that same business by way of its Gulf Line.

Portland business not via Sunset.

Can. Pac. differential.

Morgan and Mallory S. S. lines.

(848) The M. K. & T. and the Gulf lines carry some of the business from Galveston to Colorado. Some of the Colorado business from Galveston was delivered to the U. P. at Kansas City. The Mallory Line worked all those connections. The U. P. joined the S. P. in divisions on Gulf business from Denver to Utah points. The interest of the U. P. in the Colorado and Utah business moving all rail from the seaboard was only for the carriage from the Missouri River to final destination. Business originating in territory west of Pittsburg and going all rail to New Orleans, was worked on through rates, and the concurrence of the lines from those points to New York and New Orleans was necessary. The line originating the traffic would naturally move it the way they get more revenue, if possible, but they didn't generally control.

Colorado and Utah business.

(849) The S. P. generally controlled. The initial lines would control only from local points. Their influence would naturally be thrown towards sending it by the route over which they secured most revenue. Witness never attempted to compete for Colorado and Utah business originating west of Pittsburgh, by way of New Orleans, either by rail or by the Morgan Line. The running of ships to Galveston, while witness was a traffic official of the S. P., was a very irregular service, only periodical, and only a trifling amount of Colorado business was ever carried that way. For Colorado business via New Orleans, the Morgan Line only had through

Business originating west of Pittsburg.

rates over the S. P. (850) Prior to receivership, the U. P. owned the line afterwards called the Colorado Southern, but not after the Receivers were discharged. For several years prior to the purchase of the S. P., the U. P. had not owned the Colorado Southern. Trans-continental rates were made at conferences at which all the roads were represented. All the lines through to the Coast were considered as factors.

Transcontinental rates made at conferences.

(851) It was because of the competition of these lines that rates through to the coast were cheaper than to intermediate points. Distance by steamer New York to New Orleans, 1,800 miles, and to Galveston 2,000 miles, but on a pro-rate basis the water line is taken at three miles for one of rail, which would reduce the distance from New York to New Orleans to 600 miles, New Orleans to San Francisco, rail, 2,495 miles. Distance New York to Chicago 900 miles; from there to Omaha, 500; thence to Portland 1,800 miles; in all 3,200 miles to Portland.

Distances.

(852-853) From Portland to San Francisco by rail about 700 miles. Consequently, the line to San Francisco via Portland and thence via water is a little shorter than the Sunset route to San Francisco. Witness thought it would not be impossible in case of active competition to route San Francisco traffic via Portland.

The Canadian Pacific, for ten per cent. less, carried shipments to San Francisco by Vancouver, but only to the one point. In view of the fact that U. P. could carry freight via Portland to San Francisco, that fact might have been used in fixing rates to the coast, but witness doesn't think it was a factor. Boats could have been put in to San Diego, and connected with the Santa Fe from Portland. For years the O. R. & N. operated a line of boats between Portland and San Francisco, competitive with the S. P. Witness didn't think the Great Northern had ever attempted to take business for San Francisco via Puget Sound, and thence by water. Thought at one time the Northern Pacific had attempted to take business via Puget Sound, but it was "merely a flurry;" didn't amount to anything. The Southern Pacific, with two or three sailings a week from New York to New Orleans and Galveston, could load whole trains at once on its dock and rush freight through to San Francisco, but the all-rail lines receiving business in broken lots and irregular quantities, are unable to give anything like the service by rail and boat from Puget Sound or Portland, but what has greater influence is that the entire S. P. line is under one control, and there is no divided responsibility in the settlement of claims, and matters of that sort.

Portland-San Francisco route, not a factor.

(854) Doesn't think the U. P. could secure any considerable amount of business for San Francisco via Portland. Thinks if the Northern Pacific, Great Northern or Canadian Pacific, or U. P., could make any profit by competing with the S. P. on San Francisco business by the use of boats down the Pacific coast, they would do so. The fact that they don't try is very satisfactory evidence that they couldn't make money by that course. From New

N. P., G. N., Can. Pac. and U. P. cannot compete with S. P. by use of boat line.

York to Denver by the Gulf is 3,500 miles, by the all-rail lines it is about 1,900. On equality of rates much business would not have moved by the longer route. There was a lower rate on Denver business via the Gulf than by all rail.

(855) The business that moved on the differentials compared to the whole business was very small. There would have been practically none on equality of rates. Since the consolidation, during witness' connection with the S. P., both the agencies in New York were actively soliciting business. Witness had no knowledge of any change. Boston and Philadelphia are the same. (856) Consolidation of S. P. and U. P. agencies due to the common management and economy. Thinks Northern Pacific shared in the old pool as applied to California business, but couldn't say positively. If the Northern Pacific did, the U. P., Short Line, and Nav. Co. did of course. Has no distinct recollection. Couldn't say whether the Northern Pacific had any interest in pool or not. Old pool ceased to exist certainly prior to 1890.

(857-862) HARRY C. BLYE.

Blye.

General Agent of the Trunk Line Association, in New York City, for thirty years. Witness promised to supply statement showing division of business originating from shippers in New York City and destined for the Pacific coast, as between the Morgan Line and the rail lines. The S. P. stopped reporting to witness in 1901 or 1902. Thinks reports were made pursuant to agreement, and if there was a good way out of it, were not furnished at all.

New York. Gen. Ag't., Trunk Line Ass'n.

(862) FRANK W. WHITE.

White.

Employed in the Division of Rates and Transportation, of the Auditor's Office, of the Interstate Commerce Commission. Complainant's Exhibits 81-A to 81-K were prepared in witness' office, and were examined by him in connection with the tariffs, after they were prepared. 81-A is a statement showing class and commodity rates from points east of Missouri River to California terminals from June, 1887, in connection with the other exhibits, up to the present time. (863) "New York common points" are points in a general way east of Buffalo and Pittsburg down as far as just east of Bristol, Tenn. All territory east of there and north of the Norfolk & Western from Bristol to Norfolk. California terminals in a general way are San Francisco, Sacramento, Stockton, Los Angeles, Marysville and San Jose. Portland is a Pacific coast terminal. (864) Pacific coast terminals are points that are adjacent to the Pacific coast. Not what you might call inland points; in fact all of the big cities on the coast. They extend from National City, or San Diego, to Vancouver. Complainant's Exhibit 81-A shows the rates from New York common points, Pittsburg-Buffalo common points, Cincinnati-Detroit common points, Chicago common points, Mississippi River common points and

Employee I. C. C.

Rate statements.

Missouri River common points to what are known as the California terminal, including also Portland, perhaps East Portland. Generally speaking, the rates are the same from all these eastern points to the California points, including Portland, by all lines, rail and the rail and water lines, by the Gulf. This is true except as to a few commodities. In the exhibit the commodities selected are representative commodities.

Eastbound rates.

(865) Exhibit 81-B is a statement showing the east bound rates from the same terminals to the same eastern points. 81-C, 81-D and 81-E are statements showing the rates to and from Colorado common points, both all rail and sea and rail, the latter including both the Morgan and Mallory Lines. Exhibit 81-F is a statement showing some few commodities in addition to those shown in 81-A. Exhibits 81-A to F, inclusive, were made up in October, 1908. Exhibits 81-G, H, I, J and K bring the east and west bound rates shown by 81-A to 81-F, inclusive, down to the present time. These exhibits offered in evidence.

Class and commodity rates.

(866) Exhibit 81-A, Statement showing class and commodity rates in effect June 24, 1897, to date, from and to various points named. (868) Exhibit 81-B, Statement showing class and commodity rates from Jan. 10, 1898, to date, from and to various points named. (870) Exhibit 81-C, Statement showing class rates, all-rail, from Colorado common points to New York, Jan. 1, 1898, to date. (872) Exhibit 81-D, Statement showing class rates, from Colorado common points via Gulf routes to New York, May 12, 1897, to date. (873) Exhibit 81-E, erroneously entitled "Footnotes to complainant's Exhibit 81-D," see post p. 3378. (875) Exhibit 81-F, Statement showing commodity rates from various points named to California terminals supplementary to statement showing class and commodity rates from New York, etc., to Pacific coast terminals, as per statement No. 1519. (877) Exhibit 81-G, Comparative statement showing changes in eastbound transcontinental freight rates, taking effect Jan. 1, 1909. (878) Exhibit 81-H, Comparative statement showing changes in westbound transcontinental freight rates, taking effect Jan. 1, 1909. (879) Exhibit 81-I, Continuation of 81-H. (880) Exhibit 81-J, Comparative statement showing changes in class and commodity rates from San Francisco, Cal., to Portland, Ore., Feb. 10, 1898, to July 1, 1908. (881) Exhibit 81-K, Comparative statement showing changes in class and commodity rates from Portland, Ore., to San Francisco, Cal., Feb. 10, 1898, to July 1, 1908.

Passenger fares.

(882) Exhibits 82-A to 82-L, inclusive, offered in evidence, and are statements showing first and second class passenger fares from eastern points and points as far west as Pueblo, to San Francico, Los Angeles and Portland.

Exhibit 82-A, Statement showing first and second class passenger fares from and to points named. Exhibit 82-B, Statement showing first and second class passenger fares from and to points

named (continued from complainant's Exhibit 82-A). Exhibit 82-C, Statement showing first and second class passenger fares from and to points named (continued from complainant's Exhibit 82-B). Exhibit 82-D, Rates from Puget Sound points to New York, Harrisburg, Pittsburg, Cincinnati, St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs and Pueblo via various routes. Exhibit 82-E, Statement showing first and second class passenger fares from and to points named. Exhibit 82-F, Class rates from St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs and Pueblo, to Los Angeles, San Francisco, and Portland via various routes. Exhibit 82-G, Passenger rates from New York to Los Angeles, San Francisco, Portland, and Puget Sound points, etc. Exhibit 82-H, Passenger rates from New York to San Francisco, Los Angeles, Portland and Puget Sound points via different routes. Exhibit 82-I, Passenger rates from Harrisburg, Pa., to Los Angeles, San Francisco, and Portland, etc., via various routes. Exhibit 82-J, Passenger rates from Harrisburg, Pa., to San Francisco, Los Angeles, Portland, and Puget Sound via certain routes. Exhibit 82-K, Passenger rates from Pittsburg, Pa., to San Francisco, Los Angeles, Portland and Puget Sound points via certain routes. Exhibit 82-L, List of rate sheets from which passenger rates are quoted. (884-887) Exhibit 83 is a statement showing the difference in rates between the Mallory and Morgan Lines on the one hand, and the all-rail lines on the other, from New York to Pacific coast terminals, from January, 1900, to the present time. The class rates are the same, and generally the commodities rates are also, but this exhibit shows the exceptions. Offered in evidence.

Tariff changes.

(887-90) Exhibit 84 continues 83 down to the present time, and shows the changes made by the tariff which took effect January 1, 1909. Referring to Exhibit 83, on January 18, 1900, there were approximately 65 items on which the rates were less by the Mallory and Morgan Lines than by the all-rail lines. Since 1901, as shown by Exhibit 84, there are about 20. That is, out of many hundred items.

(890) The tariffs show the same rates east of the Missouri River by all lines to the Pacific coast, including New Orleans as a Mississippi River point, so that freight from New Orleans could move by the U. P. to California terminal points. (890-899C) Exhibits 85 to 96 are tariffs naming rates from foreign ports by steamship lines to New Orleans, thence via the U. P. and connections to Pacific coast terminal points. Offered in evidence.

Joint freight tariffs.

Exhibit 85, Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Hamburg, Germany, to Seattle, Wash., on 25 cases earthenware.

(892) Exhibit 86, Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 100 cases champagne.

(893) Exhibit 87, Joint freight tariff, Illinois Central R. R. Co., from Bordeaux, France, to San Francisco, on 50 cases wine.

(894) Exhibit 88, Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 180 cases mineral water and 580 cases of window glass.

(895) Exhibit 89, Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 238 cases mineral water.

(896) Exhibit 90, Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Oregon Short Line R. R. Co., from Antwerp, Belgium, to Pueblo, Denver, San Francisco, Salt Lake City, on cases of window glass, crockery, toys.

(897) Exhibit 91, Joint tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Southern Railway Co., from Antwerp, Belgium, to Oakland and San Francisco, on cases of wash blue and window glass.

(898) Exhibit 92, Joint freight tariff, Illinois Central R. R., Union Pacific R. R., and Southern Pacific R. R. companies, from Hamburg, Germany, to San Francisco, on 400 bundles rattan.

(899) Exhibit 93, Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and San Pedro, Los Angeles and Salt Lake R. R. Co., from Hamburg, Germany, to San Francisco, on 400 bundles of rattan.

International tariffs.

(899-A) Exhibit 94, Tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from London, England, to Salt Lake City, Denver, San Francisco, on certain packages of beer and tea.

(899-B) Exhibit 95, Joint freight tariff, Illinois Central R. R. Co. and other railroads named from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle, or istle.

(899-C) Exhibit 96, Joint freight tariff, Illinois Central R. R. and other railroads named from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle, or istle.

(899-D) Exhibit 97 is a map showing what is included in New York common points, Pittsburg and Buffalo common points, Cincinnati and Detroit common points, Chicago common points, Mississippi River common points, and Missouri River common points.

Rates the same by all lines.

It is not unusual for rates between the same points by all lines to be the same. The rates have to be approximately alike, where the railroads furnish anything like equal service. During the same time, the rates between New York and Chicago were the same, except the so-called differential lines. During the summer, of course, there are lower rates by the lake, but by the all rail lines, standard lines, the rates are the same.

(900) The same is true of all rail lines between New York and St. Louis, as far as witness knows. Rates between New York and all Missouri River points are made on a combination of the river and are the same by all-rail lines. Witness would not consider that the circumstance that the rates are the same via the all-rail lines from the Atlantic seaboard to the Pacific coast, and by the

Sunset and the Mallory Line and its connections, at all exceptional, or significant. He is not a traffic man, and therefore not able to give testimony on that point. The result of these statements with respect to rates from New York and common points to the Pacific coast would not appear to be in any respect exceptional. As far as witness knew, from the Atlantic seaboard to all Mississippi and Missouri River crossings, to Colorado points, Utah points, Montana points, and indeed universally, as a rule, under the Interstate Commerce Act, where rates are filed under the Interstate Commerce Act, the rates are the same via all lines except when agreed differentials are shown by the tariffs.

(900) CHARLES WHITNEY THROCKMORTON.

Throckmorton.

Lives in Morristown, New Jersey. Has been a stock broker since March, 1905, doing business at 346 Broadway, New York. (901) Was employed by the S. P. in March, 1892, in its freight office at New York City, in various capacities, beginning as a boy in the Claim Dept., and for seven years prior to 1904 was in the Soliciting Dept. Tried to get freight by personal solicitation and correspondence, principally the former. Called upon shippers and connecting lines. Freight witness sought originated all over the country. Solicited both east and westbound freight. Wherever witness found a shipment, he tried to get it. There was no limit. Good soliciting agents take care of the shipper's business as much as they can; they explain the movement of the freight, give him the best routes and rates, and keep him posted as to any changes in rates; also trace freight and take care of his claims. Witness has always regarded a solicitor as practically the agent of the shipper.

New York. Formerly with S.P.

Solicitation of freight.

(902) Mr. Hawley was witness' chief. Recalls the time that the Union Pacific purchased the stock of the Southern Pacific. Previous to that time in soliciting freight, he endeavored to route it to the Pacific coast by the Morgan Line and the Sunset Route via New Orleans, until the Galveston Line was put on, and then via Galveston. From territory west of Pittsburg endeavored to route it all-rail Sunset through New Orleans. After 1901 no new instructions were given witness with reference to the way he should work the freight, but he tried to get the business for the line he was really employed by. Regarded the S. P. as his road. Believed there were some general rate divisions shown, showing the amount that accrued to the lines west of Omaha and the lines west of New Orleans. They were practically the same—the amount of revenue accruing. (903) That is, the U. P. and S. P. together received about the same revenue that the S. P. did from New Orleans. No instructions or requests were given to witness with reference to routing traffic by the Ogden route. Regarded that as "a second route," because the S. P. participated in it. U. P. had a soliciting agency, and witness was in very active competition with them. To the best of witness' recollection, the Morgan Line got about sixty per cent. of the business out of New York for the Pacific coast.

After 1901 no new instructions given.

While witness was soliciting agent, both before and after 1901, thinks the percentage was about the same, except for variations that were caused by different conditions. Thinks the Sunset route held its own pretty well.

Activity of freight solicitors.

(904) S. P. had five solicitors in New York City. Had no traveling freight agents out of New York. Merchandise, dry goods, machinery, etc., moved by the Sunset to Portland. Witness always tried to get all the business he could to Portland, or any other business on the Pacific coast that his line could handle. As eastbound freight, witness solicited dried fruit, canned goods, and all the stuff that moved from California and Oregon; also canned salmon from Portland, and apples from the Willamette Valley. (905) Fairly successful in getting business from that section. Thinks all the lines that ran into Portland were equally strong as competitors of the Sunset route. The traffic from New York to Colorado was about the same thing—general dry goods, machinery, and everything of that character. It was spasmodic, but to Utah more steady than to Colorado. Still, the latter was a pretty good business. Witness thought that the Morgan Line to Galveston was put on before the Spanish War in 1897.

(906) (Mr. Spence said Mr. Hawley was right, that it was put on in 1903, after the latter left in 1902.) (907) If it could possibly be handled via New Orleans, witness tried to get freight that way during the whole period he was connected with the Company. If he located a car in the territory north of the Ohio River and Ohio River points, and west of Pittsburg and Buffalo, and could get the routing here, he got it. If not, he notified the S. P. agent in Chicago to go after it. Witness understood the latter's effort was always to work business north of the Ohio River by the Ogden route. That would be the natural route for it to move; better time and everything. (908) That was true prior to 1901, as well as subsequently. U. P.'s traffic to and from Pacific coast, except at Portland, interchanged entirely with the S. P. at Ogden. Under the Interstate Commerce Act couldn't make rates to and from California without concurrence of S. P. The S. P.'s share of the Portland business was comparatively small. There was a difference of 1,500 miles in favor of the all-rail line.

S. P. agent at Chicago works business north of Ohio River via Ogden.

Same competition between U. P. and S. P. as before 1901.

(909) The same competition between the S. P. and U. P. continued after 1901. Witness was just as strenuous in efforts to get business for the Sunset route. Didn't notice any difference in U. P. agency. If anything, there was rather increased activity. U. P. solicited just as aggressively against the Sunset. U. P. practically at the mercy of the S. P. with respect to California and Pacific coast business south of Portland. Merely an intermediate carrier, without any rate-making power respecting trans-continental business.

U. P. and Pacific coast business.

(910) U. P. dependent on S. P. for business originating on the Pacific coast south of Portland. That was not true of westbound business. They had to give it to the S. P., in either case. Witness

wouldn't say that the business to Colorado points in this territory was generally small in value. It would all be comparative. "We carried quite a good deal of it." It was a small part of the tonnage of the Morgan Line, as compared with the business for Texas or the Pacific coast, or for Louisiana. Not able to say it was "very small." Doesn't know the exact tonnage. Moved spasmodically.

All-rail shipments for Colorado.

(911) On all-rail shipments for Colorado, the principal haul, in matter of distance, would be over the lines east of the Missouri River. West of Chicago or the Missouri River, the traffic could go via the U. P., the Atchison, the Rock Island, the Missouri Pacific, or the Burlington. The consignor or consignee controls the routing of shipments very largely, and if the U. P.'s soliciting agent could induce him to route his car by the U. P., the S. P. had nothing to do with it, except haul it from Ogden to San Francisco. Prior to 1901 witness, in soliciting via Ogden as secondary route, worked with every line, but principally with the U. P. Sometimes worked with the Rio Grande. (912) Business moved by Panama, and also through the Straits of Magellan. Distance is not controlling. The time and rate control.

Never routed San Francisco business via Portland.

(913) Witness never routed any traffic over the U. P. boat line from Portland to San Francisco. Doesn't know of any traffic going that way. Remembers cars going from Portland over the Sunset. Remembers the last lot of stuff he lost—a lot of apples. Wouldn't let the Sunset handle them; objected to the handling. That was in 1900 and something. (914) The all-rail was the easiest route for it to move. "Made the best time, in the handling." Does not recall any change after 1901 in the matter of movement of traffic to and from Portland. Solicited Portland business just as actively after 1901 as before. Portland business Sunset able to control as compared with total Portland business by all-rail lines was small. Whenever witness said that the S. P. and U. P. were competing, he meant that the Sunset route competed with the Ogden route, of which the S. P. also formed a part.

When he could not get business via Sunset, sent it via Ogden.

(915) The two lines are connecting lines at Ogden, but they were also competitors to control the business. All the cars that the Morgan Line office—the S. P. offices could control, it tried to control and route. It gave the office more credit, the more tonnage it could get, whether via the Sunset or the all-rail route. When witness could not get the business via the Sunset route, he sent it via Ogden. (916) Witness thinks the U. P. and Central Pacific were both connecting and competing lines. The former certainly had to deliver traffic to the S. P.—and they were competing in the fact that the S. P. wanted to control all the business they could over these lines, and sought to get the business and route it. The S. P. got every pound of freight destined to the Pacific coast that the U. P. took to Ogden. Witness didn't mean that if the U. P. got control of a car of freight that was going to the Gulf over the S. P. Line from Ogden, the latter would still try to avoid taking that car; not that car, but

future cars. Meant what he had said a number of times, that he worked all business he could by way of New Orleans.

Colorado-Utah business.

(917) Doesn't think the trans-continental business handled by the Texas & Pacific via El Paso amounted to very much. Practically all the Colorado and Utah business moving by the Gulf now goes through Galveston. What the Morgan Line gets goes up on the H. & T. C., and from the Mallory Line by various roads. The Atchison is the natural connection. The Atchison also has a line reaching the same points from Chicago, and works that business by the Gulf, too, in connection with the Mallory Line. The M. K. & T. does also. Doesn't think the M. K. & T. would take it to Kansas City. That would be a roundabout way.

(918) Doesn't think the Texas & Pacific used to engage in that business to Colorado. Doesn't know as to that. Never routed a car that way. Doesn't think shippers are interested in a division of rates between carriers. Both the work of the U. P. agents and of those of its connecting lines east of the Missouri River are a potential factor in securing business for the former from this territory for Pacific coast points. The initial lines work against the Morgan Line. The U. P. gets a larger percentage of business from the connecting lines than from the solicitation of their own men. Very much larger. Witness is not speaking from knowledge, but as a matter of opinion. Very important for soliciting agents to cultivate their connecting lines. (919) With rates at an equality it is more important than cultivating shippers. Business is exchanged more or less as a matter of reciprocity. (920) If U. P. delivered a car to the S. P. to haul it to the Pacific coast, the S. P. would have a good deal more to do than simply to haul it there, namely, to make the rates under which that car moved. The Union Pacific could not get it there except at rates agreed to with the Southern Pacific.

U. P. gets more business from connections than from solicitation of agents.

U. P. could not get freight to coast except at rates agreed to by S. P.

Chumasero.

(920) JOHN F. CHUMASERO.

Charge of traffic for Royal Baking Powder Co.

Since March, 1901, had charge of traffic of Royal Baking Powder Company; also one of the departments. Prior to that time general clerk in one of the departments. (921) Ships to Pacific coast points from main factory in Brooklyn. Has the largest business of that kind in the country going to Pacific coast. Ships carloads to the coast. From 1901 on, traffic has been solicited by agents of the S. P., U. P., Santa Fe, Northern Pacific, Great Northern, Canadian Pacific—all of them. Rates are the same. No attempt at cutting rates. Main factor is the service; length of time, care in handling the goods, and the personality of the soliciting agent. Ships by all roads to the coast. To California chiefly by Morgan Line or Santa Fe.

Routing of his traffic.

(922) To Portland generally by Northern Pacific, Great Northern and Oregon Short Line. Has no rule. Ships to the Orient entirely by Suez. Doesn't ship to Portland by the S. P. Too long

and roundabout a way; too much handling. Not actively solicited for Pacific coast traffic by all the lines out of New York. Witness would say that the solicitation was confined to trans-continental agents. In a general way, for example, the New York Central want all the business they can get, but witness was not specifically solicited by them for California business, or any Pacific coast business. If they hear that witness has a car moving, they come around and try to get it. Solicited right along by both U. P. and S. P. agents. No change in that respect in recent years. They are still competing.

(923) FRANK B. MESICK.

Mesick.

Resides at Deal Beach, New Jersey. His place of business is 401 Broadway, New York. General Eastern Freight Agent of the Rock Island since 1882. In the railroad business nearly 37 years. Agrees with Mr. Throckmorton's testimony as to the general duties performed by soliciting agents. All work along the same line. The Rock Island's eastern terminus is at Chicago. (924) Its western terminus at El Paso and Denver. Also reaches Omaha. Built into El Paso about seven years ago. Prior thereto Rock Island's only route on trans-continental business was by Denver or Omaha. At that time worked with the U. P. and D. & R. G., dependent on whether traffic carried to Omaha or Denver. Rock Island gets the entire haul to Denver, and witness takes it that way when he considers it to the Company's interest. If cases arise where it seems to be to the Rock Island's interest to work the U. P. via Omaha, witness works that way, ignoring the long haul and getting the haul from Chicago to Omaha. In working the trans-continental business with the U. P., witness worked with the latter's agents, if necessary, or independently of them, with the shippers. At times worked with the agents of the U. P. to secure shipments. Were then competing with the Sunset route, the Atchison, and the Denver & Rio Grande, that is, on California business, and on the northern coast business were competing with the Great Northern and Northern Pacific.

New York. Eastern Fr't Ag't., of R. I.

Routing of traffic.

(925) On trans-continental business also competing with the Burlington and the Missouri Pacific, the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, and the Illinois Central. Sent business to California by way of El Paso, over the S. P. If destined to Southern California, competing against the Sunset and the Atchison; in fact, any line running up to Denver, connecting with the San Pedro, as well as the U. P. and S. P. In competing with the Sunset, competes with that portion of the line east of El Paso. (926) Has noticed no change in the activity of the U. P. and S. P. solicitors here in New York. The Rock Island handles business by the Gulf from the Atlantic seaboard to Colorado and Utah points, both through New Orleans and Galveston, and if witness cannot get business by way of Chicago, takes it by the Gulf—any

way he can get it. Prefers the route that offers the most revenue. Has an active route by the Old Dominion Line to Birmingham, Ala.

(928) The U. P. is one of the Rock Island's competitors to Colorado common points, whether traffic comes by the Morgan Line or by Chicago. It is a competitor more from the Missouri River. The U. P. does not compete with the Rock Island east of the Missouri River.

Allen.

(928) LOUIS M. ALLEN.

Freight Agent N. Y. Central.

Residence Westwood, New Jersey. Employed by the New York Central since 1888, as clerk, soliciting agent, division freight agent, assistant general eastern agent, commercial agent, general eastern freight agent. (929) Was once connected with the Merchants' Despatch Transportation Company, one of the New York Central fast freight lines, and with the Associated Roads of Virginia and Carolina. Has been railroading since 1868; always in the traffic department. Trans-continental business originating on the Central moves to the coast over any line from Chicago, St. Louis, Cincinnati or Louisville.

(930) Speaking of the trans-continental lines as distinguished from those east of the Missouri River, the former, beginning with the Great Northern on the north, the S. P. Sunset route on the south, have been competing here and endeavoring to get business to the coast. All maintain separate agencies. The agents of connecting lines work together more by way of reciprocity than anything else. "If one has a carload, why, he will swap it off with anybody else that has got a carload, if it is possible; that is, all the conditions being equal." Thinks some years ago business was routed by way of Portland and the steamship line down to San Francisco. That was at a time when there was pretty strong competition, or something of that sort. (931) Sometimes the consignor or consignee would route the shipment, and sometimes they would leave it to the soliciting agent to route beyond his own line. Witness works through the consignees in New York, in order to secure eastbound traffic from the coast. "We work on informaiton that we obtain, sending it sometimes to our representatives on the Pacific coast, and other times we work through the representatives of the trans-continental lines." If witness found that a car or a trainload of stuff was coming east and was routed over the Union Pacific from Portland or San Francisco, he would see the agent of the Union Pacific road and ask the latter to route it over the New York Central. That would be an occasion for some of the swapping or reciprocity he had spoken of. That sort of transaction was of very frequent occurrence. It is customary to respect the shipper's wishes as to routing. Reciprocity spoken of applies to unrouted traffic.

Reciprocity of solicitors.

Portland route.

(932) Doesn't think any trans-continental traffic goes to Puget Sound and then south. Remembers the Canadian Pacific's attempt to force a differential. Principal traffic that New York Central controls for Pacific coast goes by the U. P. via Ogden. "Q. The

fact that these intermediate carriers have agents also soliciting does not indicate that they are competing with everybody else who is soliciting, does it? A. Well, it means that we had to work with them. We often had to work with them for business that they controlled or business that they influenced. (933) The Chicago, Milwaukee & St. Paul and the Chicago & Northwestern have soliciting agents in New York. They work also for trans-continental traffic. They are not witness' competitors. They are connecting lines. The Union Pacific in having soliciting agents here works for the trans-continental traffic, and it is not a competitor of those lines for that traffic. New York Central's active competitors for trans-continental traffic are every line leading out of New York, including the Sunset Route. The U. P. is not a competitor. It is a connection. (934) Would not say definitely that any traffic moved by Portland and thence by water south. Only an indistinct recollection. "Q. Did you ever attempt to route any that way? A. I would not like to say that I did."

Had to work with other agents who controlled business.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME III.

NEW YORK CITY, JANUARY 7, 1909.

Smith.

(935) GEORGE T. SMITH.

Jersey City. Gen. Ag't., Pennsylvania.

Resides in Jersey City. Seven and a half years General Agent of the Pennsylvania Railroad. For ten years previous to that, commercial agent of the same Company. Left the service of the railroad January 1, 1909. (936) For trans-continental business to California points, the S. P., U. P. and Santa Fe were competitors. U. P. and S. P. competed for business to the coast. Mr. Hawley routed his business by the Sunset. Business from New York to Portland moved over the O. S. L., Northern Pacific and Great Northern; at one time over the S. P. Witness had a memory of the S. P. competing for Portland business. Doesn't know how much S. P. did. Recalled business going to Portland, and thence by boat to San Francisco about twenty years ago, resulting from the effort of the Northern Pacific to overcome the influence of the S. P. in using boats from San Francisco up.

Business to San Francisco via Portland.

Transcontinental lines.

(937) Very active competition existed prior to 1901 between trans-continental lines for trans-continental business. This traffic to Colorado and Utah common points must have been important. In referring to the Southern Pacific, the Santa Fe and the Union Pacific as trans-continental lines competing for San Francisco traffic, he had in mind that they were the only terminal lines. Union Pacific is a terminal line in connection with the Central Pacific. The Union Pacific never controlled the Central Pacific. The Union Pacific runs from Omaha to Ogden. (938) The U. P. itself is not a terminal line for California business. For the last fifteen years the Burlington has had its own lines from Chicago to Denver, and is actively engaged with the other lines in trans-continental business. The Rock Island has also had a line for about fifteen years between the same points. It has also had a line from Chicago to El Paso. Witness would say that it participated in trans-continental business over those lines.

(939) Witness doesn't remember doing any business with the Rock Island by El Paso, but did by Denver, Missouri Pacific has a line from St. Louis to Denver. There were a great many other lines engaged in trans-continental business. Didn't mean to say that three lines first mentioned were the only three companies that were engaged in trans-continental business west of the Missouri River. The D. & R. G. also engages in trans-continental business. As to the lines east of the Missouri River, practically every line east and west competed for this business. The principal ones were the New York Central, Erie, Pennsylvania, B. & O., (940) Lehigh Valley, C. & O., and N. & W. A great deal of trans-continental business originated on the Pennsylvania, and if controlled by its employes, the traffic moved the longest haul, to St. Louis or Chicago. There are about 1,000 miles from the eastern terminus of the Pennsylvania to St. Louis, and a little less, but almost the same distance to Chicago. About the same distance by practically all the principal trunk lines. There are several lines between Chicago and St. Louis (Missouri River) engaged in the same business, the Northwestern, the St. Paul, and the Illinois Central. West of the Missouri River the traffic would go over one of the Iowa lines, the St. Paul, the Northwestern or the Burlington.

Every line east and west of the river competed for transcontinental business.

(941) West of the Missouri River the bulk of the traffic moved by the U. P. and D. & R. G. as against the S. P. The great bulk of the Pennsylvania's trans-continental traffic went to Chicago rather than to St. Louis. If it went over the U. P. or D. & R. G., in either case, it was delivered to the Central Pacific, which was the only outlet for those lines. Moved under joint rates participated in by each line. Competition between the S. P. and U. P. was between the Sunset and the Ogden routes. Of the latter, the Central Pacific formed a part. C. P. operated by S. P. for a great many years. Pennsylvania could send traffic to California by way of the Atchison from Chicago. (942) West of Chicago the Pennsylvania didn't care which way the freight went. It was a freight solicitor's matter. One solicitor paid his debts to another.

Bulk of Pennsylvania business went via Chicago rather than St. Louis.

(943) Witness thought it was twenty years ago that the Northern Pacific took trans-continental business for San Francisco via Portland. Wasn't sure it was Portland and not Puget Sound. Witness' recollection was distinctly in connection with the Northern Pacific, and he assumed the Pacific coast port was Portland. Northern Pacific has to go by way of Tacoma to reach Portland, and would reach Puget Sound before Portland. Never heard of any movement by U. P. to Portland, thence to San Francisco. The Atchison has been a very active competitor for California business, its line extending as far east as Chicago. (944) Never knew of any traffic moving from points west of Pittsburg to New York, and thence over the Morgan Line. The Morgan Line absorbed the rate on traffic from points east of Pittsburg to New York. Didn't know of any movements from New York to California

N. P. and San Francisco.

points over the Northern Pacific or Great Northern, not by boats from Puget Sound, but all-rail.

Utah and Colorado business.

(945) Knew of movements to Portland by those lines, all-rail, also lake and rail. Other lines participating in the Utah and Colorado business from the Atlantic seaboard were the Savannah Line, the Mallory Line, and their rail connections at Savannah and Galveston, the Chesapeake & Ohio, and the N. & W., which is the Old Dominion Line. No change in that condition in recent years. Competition has gone on since 1901, as well as before. U. P. and S. P. both solicited business actively. Both competing lines. Means by that, that the U. P. is a part of the rail lines that engaged in competition for business against the Sunset route. The agents of the S. P. were endeavoring to route business over their line to the coast, and the agents of the U. P. over theirs.

Blye.

(946) HARRY C. BLYE, Recalled.

Statistics of traffic from New York to Pacific coast.

Exhibit 98 made up by witness covers all traffic destined to Pacific coast points, not simply California points, but to the North Pacific Coast points as well. "Under California is included all traffic destined to British Columbia, California, Idaho west of and including Kuna, Nevada, Oregon, Washington and all Trans-Pacific Traffic." It does not include the business that reaches the coast over the Canadian Pacific. "California traffic in our office, for our statistics, includes all the traffic that goes to the points mentioned, whichever route it goes. If any trunk line out of New York carried California traffic, or what we call California traffic, to Chicago, or if it carried a shipment consigned to a connection with the Canadian Pacific at Minneapolis, and that was destined to Vancouver, it would go into our report just the same as if it took a shipment for the Empire of Japan, or for China, or for Australia, or for Honolulu; that would be California traffic." It includes all traffic moving out of New York over all trunk lines going across the Pacific Ocean whether it goes in Canadian Pacific ships or American ships. (947) Exhibit 98 will be better understood by remembering that the object of the statistics was, in the first place, to show how much the rail lines carried of California traffic, in distinction to what the S. P. and the Cromwell and the Mallory Line got out of New York. The statistics begin in 1883 and run down to March, 1902. That is when the S. P. stopped reporting.

(948) Information from which Exhibit 98 was made up is furnished by the trunk lines by impression copies of the waybills. Fifty or sixty clerks employed in witness' office. Thinks forty clerks are working in the department where those reports are made up. When the waybills came in, they were analyzed, the traffic picked out and recorded in different books. In 1883, 1884 and 1885 there were about 300 clerks in the office, dissecting waybills and finding the destination of traffic. From the books of records, reports were made up from time to time, and sent to the parties

in interest, including the S. P. Co. (949) Shortly after the reports are made up, the waybills are destroyed.

(951) Exhibit 98 offered in evidence, and objected to "not on account that it is not a correct record of the figures as reported to Mr. Blye by the railroads and steamship companies, but otherwise they object to it as hearsay." Exhibit 98, Statement covering California traffic from New York City via Trunk Lines and Gulf Lines from June, 1883, to March 21, 1902. (952) All the lines sent in waybills, and the agent who made up the records certified that these included all the traffic. Morgan Line sent in waybills till November 17, 1893. After that merely a letter stating their tonnage. (953) Report includes shipments out of the port of New York, that includes Brooklyn, Staten Island, Jersey City, Hoboken, and all the railroad terminals around New York. "Lighterage limits" covers it.

(955) In answer to the question, what lines of transportation were there from 1896 to 1907, over which the trunk lines could get this traffic to the Pacific coast, witness replied: "A shipment might leave New York—we will take one road, for illustration. If a shipment went out for San Francisco, and had to go by the New York Central road, the New York Central road would probably carry it to Chicago. At Chicago it might give it to the Atchison or, the Rock Island, or the Burlington, or the Northwestern, or the Milwaukee & St. Paul. If it was going to the North Pacific coast, it could be sent up to Minneapolis or St. Paul, to go over the Great Northern or the Northern Pacific, or it could be sent to Omaha and given to the U. P. to take it over the O. S. L. If it was going to San Francisco, it would probably have been consigned by some line to Omaha, and given to the U. P. and delivered to the Central Pacific, and taken into San Francisco, because that was the most direct route and the ordinary route. Somebody, for experiment, if he felt like it, might give it to the Illinois Central to carry down to New Orleans, and give it to the S. P.—he might do that if he was reasonably crazy, but he wouldn't try it very often." Routing of shipments.

(956) All-rail shipments by these trunk lines for any point on the Pacific coast south of Portland had to go either by the Atchison or S. P. to destination. It is about 1,000 miles from New York to Chicago, and 500 miles to Omaha; 1,000 miles from Omaha to Ogden, and 800 miles from Ogden to San Francisco. That figures up about 3,300 miles. Witness thought the post office distance was 3,200 miles. (957) It is about the same distance from Portland to San Francisco as from Ogden to San Francisco. (958) U. P. has a line from Kansas City west to Denver, and then connecting with the main line at Cheyenne, and the U. P. carried trans-continental traffic either through Kansas City or Omaha. (959) Western termini of the Pennsylvania system are St. Louis and Chicago. Witness thought the Pa. R. R. system would call their line a line to Chicago. Doesn't know whether the Pa. R. R. system proper runs to St. Louis or not. They run through trains.

(960) Doesn't know whether the Pa. takes trans-continental traffic by way of St. Louis or not. Best recollection is that it is routed to Chicago. If they took it to St. Louis, it would move westerly over the U. P. by way of Kansas City. The Burlington, Chicago & Northwestern, and other connections of the U. P., had solicitors in New York for that business. Chicago & Northwestern is not a competitor, a connection. Burlington is a lawful competitor for Denver business, and from Denver on in connection with the D. & R. G. Traffic might move over the Burlington to Ogden, without touching the U. P. at all, and does move that way.

All roads solicit business.

(961) The Burlington has a line to Denver, and the same is true of the Rock Island. They have soliciting agents here, and so have the Missouri Pacific. Every railroad between Chicago and the Missouri River is represented in New York, trying to get trans-continental business, and all those roads, to get business to or from California, must deliver it either to the Atchison or the S. P. Might do that without touching the U. P. at all. If the S. P. was indifferent, the U. P. would have to solicit this business in competition with the other lines west of the Missouri River. When witness was handling waybills, never saw any freight billed through to the Pacific coast. Never saw anything billed west of the Mississippi River. (962) Witness didn't mean bills of lading. Meant waybills, which generally show the traffic up to Chicago or the Mississippi River, and show the final destination, of course. In case of through billing, it sometimes shows the rate beyond the terminus of the billing. Witness never heard the expression "hundred per cent. route" in connection with the Sunset, or any other line.

Taylor.

(963) S. FREDERICK TAYLOR.

Vice Pres't. Borden's Condensed Milk Co.

Since 1902 Vice-President of Borden's Condensed Milk Company. From 1887 to 1902 Secretary and in charge of Traffic Dept. Had considerable trans-continental and Oriental shipments. (964) The following companies were soliciting business to California points: Santa Fe, S. P., N. P., Great Northern, Can. Pac., and all their eastern connections, among whom was the U. P. Never shipped by the Sunset route, though solicited to do so. Once, for advertising purposes, sent out a special train.

Routing of his business.

(965) It moved over the U. P. and S. P., as all Frisco business had been doing for some time. It was the Company's established custom to divide this business according to terminal territory, the route reaching there more directly. Southern California business went by the Santa Fe. Frisco business almost entirely U. P.-S. P.; Portland business by the O. S. L.; Seattle, Great Northern; Tacoma, Northern Pacific; and British Columbia, Canadian Pacific. Exceptions were rare. Never shipped to California by way of Portland. Most of the shipments for the Pacific coast originated in Illinois and Wisconsin. The S. P. actively solicited that business by way of Ogden. The U. P. did also. Was solicited by all the lines. whether they reached the coast or not. So much so that witness

paid little attention to solicitation, because he had his schedule made out as to how he was going to ship.

(966) Actively solicited by the Northwestern, St. Paul, Burlington, Rock Island, Missouri Pacific, and all of the lines having any share in that character of traffic. Oriental business moved via the Suez up to 1889, and then trans-Pacific arrangement was made with the Canadian Pacific. The American lines carried none of that business until about 1892. It is now mostly going by the Canadian Pacific, because of the withdrawal of through rates on the American lines, but prior to that it was divided, according to convenient sailings and facilities offered, between the Northern Pacific, S. P., U. P., Great Northern, and Canadian Pacific.

(968) LAURENT C. DEMING.

Deming.

Assistant Secretary of the Atchison. Witness identifies the following exhibits which are introduced in connection with his testimony: Exhibit 99, Proceedings, meeting of directors Atchison, Topeka and Santa Fe Ry. Co., New York, Feb. 8, 1905, at which Frick and Rogers were elected directors. (969) Exhibit 100, Proceedings, annual stockholders' meeting of Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kansas, Oct. 26, 1905. (970) Exhibit 101, Proceedings, annual stockholders' meeting, Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kansas, Oct. 22, 1908. Exhibit 102, Proceedings, board of directors' meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906, relating to Northwestern Pacific agreements. (972) Exhibit 103, Proceedings, board of directors' meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906, relating to Exhibits 104 to 106. (974) Exhibit 104, Agreement between Atchison, Topeka and Santa Fe Ry. Co. and the Southern Pacific Co. with respect to the sale of Phoenix and Eastern Ry. and Joint track agreements, Dec. 7, 1906. (980) Exhibit 105, Agreement between Southern Pacific R. R. Co., Phoenix and Eastern Ry. Co., and Southern Pacific Co., and Atchison, Topeka and Santa Fe Ry. Co., granting to Atchison, trackage rights between Phoenix and Deming. (997) Exhibit No. 106, Agreement between Atchison, Topeka and Santa Fe Ry. Co., Arizona and California Ry. Co., Santa Fe, Prescott and Phoenix Ry. Co. and Southern Pacific Co., granting to Southern Pacific Co. trackage rights between Phoenix and Mojave.

Ass't. Sec'y., Atchison Co.

Various agreements between Santa Fe and S. P.

(1014) FRANK M. MURPHY.

Murphy.

Exhibit 107, Map of U. P. and S. P. systems, 1908. (1015) Witness has lived for thirty years in Prescott, Arizona. In 1893 was elected President of the Santa Fe, Prescott and Phoenix, running from Ash Fork on the line of the Santa Fe Pacific to Phoenix, Arizona. The Santa Fe Pacific is a part of the main trans-continental line of the Atchison, Topeka & Santa Fe, running through to Los Angeles, San Francisco and San Diego. (1016) The

Prescott, Ariz. Pres't., Santa Fe, Prescott and Phoenix.

Atchison now owns the stock of the Santa Fe, Prescott & Phoenix road (hereinafter called the Prescott), and has since 1901. It is operated as a separate company, and witness is still President. It is about 195 miles long. The Maricopa & Phoenix, a branch of the S. P., also reaches Phoenix. It is not a part of the main line of the S. P. It is about 34 miles down to Maricopa on the main line of the S. P. Through trains or sleepers are not run from Phoenix to Los Angeles. Freight from the east and west is handled by the S. P. into Phoenix over this little line. The Phoenix & Eastern also runs into Phoenix.

Phoenix and Eastern.

(1017) It runs from Phoenix to a point on the Gila River, known as Dudleyville or Winkleman, at junction of the San Pedro and Gila Rivers. Witness incorporated the Phoenix & Eastern in 1901. Preliminary surveys made in 1901, from Phoenix to Benson. Benson is on the S. P. The Sonora Railroad runs from Benson to Guaymas. It is now an S. P. line. Purchased by the S. P. somewhere about 1896. The El Paso and Southwestern also terminates at Benson. The latter road runs from Benson to El Paso and into New Mexico. Doesn't think that is an S. P. road. It is controlled by the Phelps Dodge Mining interests, Copper Queen interests. That mine is located in Bisbee. The El Paso and Southwestern reaches Bisbee. No other road there. The Copper Queen smelter is at Douglas.

El Paso and Southwestern.

(1018) Douglas is 20 or 25 miles from Bisbee, and is on the El Paso and Southwestern. There are a good many other mines at Bisbee. It has a population of about 17,000 people. The Calumet & Arizona smelter is also at Douglas. In addition to the El Paso & Southwestern, the Atchison, the S. P., the T. P., and the Rock Island run into El Paso. At Benson the El Paso & Southwestern connects only with the S. P. to the west. Only 96 miles of the Phoenix & Eastern were ever constructed. After witness projected the line, he sold it to the Atchison, and built the road in the interests of that Company. (1019) By Exhibit 104 the Phoenix & Eastern sold to the S. P. In addition to building the 96 miles, witness thought he had the right of way secured for the entire distance to Benson. Some of it was donated, and portions of it were purchased. From the terminus of the line, as constructed, to Benson, is about 85 or 88 miles. Before the Atchison had anything to do with it, witness on behalf of the Phoenix & Eastern made a favorable arrangement with the El Paso and Southwestern as to an exchange of traffic. They wanted the Western outlet. The arrangement was in the shape of a letter.

Right of way for Phoenix & Eastern to Benson.

(1020) Witness also surveyed a line to Lordsburg, New Mexico, just over the Arizona line, and practically to Deming. Lordsburg is on the S. P. about sixty miles west of Deming. Lordsburg is 180 or 185 miles from the present terminus of the Phoenix & Eastern. Commenced the construction of the P. & E. February, 1902. Completed to its present terminus in the Fall 1904. It is an easy country to build a railroad in.

Survey to Lordsburg.

(1021) The kind of road we were going to build would cost about $20,000 a mile. The kind of country to be built through in getting east to Deming was very rough, canyony country. A portion of it was very good, but there was some very heavy work. The heavy work in the Gila Canyon covered 12 or 15 miles. There is no railroad through there. The line referred to in the S. P.-Atchison contracts as running west from the Prescott road leaves the main line of the latter at a point about six miles north of the town of Wickenburg, south of Prescott and north of Phoenix, and about 110 miles of it has been constructed west from Wickenburg. Quite a large bridge had been built over the Colorado River at a cost of six or seven hundred thousand dollars. The prospective terminus of the road is at Bengal, on the Atchison main line. Finished the bridge June, 1908. Line to Deming. Line from Wickenburg to Bengal.

(1022) Looks to see the road completed at a reasonably early day. There were no grades on the line of more than six-tenths of one per cent., other than a few miles about half way between the point where it leaves the Prescott road and the Colorado River, and there is a little double maximum there for a very short distance. The Phoenix & Eastern is a water grade line, and would average not to exceed six-tenths of one per cent. From its present terminus through to Deming, the proposed line would have about the same grade. From Phoenix to the point on the Prescott road where this new line to the west branches off, there is a very little strip in which some changes would have to be made to bring it down to probably three-fourths of one per cent., but that covers only a few miles. The whole line was laid out on the basis of getting a six-tenths of one per cent. line practically clear through to connection with the Santa Fe. The Santa Fe from Deming has a line to El Paso, then up the Rio Grande River to Albuquerque, and on east over the Glorieta Mountains, and so on; and now they have through Trinidad; and they also have their Belen cut-off that comes in some thirty miles south of Albuquerque. The main line of the Atchison runs from Chicago to Kansas City, and westerly through Kansas and Southwestern Colorado, thence over the Raton Pass and the Glorieta Pass, on through Albuquerque, and crosses the Colorado River at the Needles. There are two mountain divides. You go over the Raton Pass, the Glorieta Pass, and also what is called the Continental Divide. That is west of Albuquerque. There is a good deal of climbing around Flagstaff. Grades. Low grade line. Route of Santa Fe.

(1023) The cut-off witness referred to takes off from the road that runs to Deming. The main line goes through Albuquerque, and the line to Deming runs from there down the Rio Grande to El Paso, and on to Deming, and about 30 miles south of there is this Belen cut-off. It comes in from Kansas, and crosses this Rio Grande road division, and picks up the Atchison again out in New Mexico. Goes south of Albuquerque, leaving it out altogether. The cut-off is also a low grade line. It was built to avoid those

heavy mountain climbs. All the way from Chicago to Deming, the Atchison does not have to climb over a mountain, that is, not what the witness would term mountains. The distance from the Needles to Bengal, where it is proposed to connect up this line that is under construction, is about 90 miles.

(1024) From Needles they climb out of the river-bottom and go over a divide, which the new line avoids by going from Parker. If the P. & E. had been constructed on up to Deming, the Atchison's line from Chicago to California by way of the Belen cut-off and Deming, through Phoenix, Parker and Bengal, would have been low grade all the way, with the exception of their little drop off in California down to San Bernardino, which they could not overcome. They strike the present through line east of that, some distance east of Barstow. The new low grade line to the junction at Bengal would be 125 or 150 miles longer than the present line, but would be far superior, as a line over which to move through traffic. In witness' judgment it would be the best low grade line to the Pacific coast.

Low grade line via Deming.

(1025) In building the line east from Phoenix, witness had a good deal of difficulty. Was interfered with by an organization known as the Arizona Eastern Railroad Company, owned by the S. P. At about the time the survey through the canyon to Deming was completed, the Arizona Eastern was incorporated, and very much to witness' surprise he found a whole lot of graders had been shipped in across the country, that were put up on the side of the mountain above him, and blasted rock down on his work, taking possession of his right of way. Witness enjoined them, and there was a rough and tumble fight, until the grand wind-up was that witness' rights were sustained in the Supreme Court, and he was left in peaceful possession of the road as far as Dudleyville. In the meantime, other parties had appropriated the canyon above, and did a lot of work up in there, and while witness was occupying that position, the agreement between the Atchison and S. P. was made, and the road was turned over to S. P. The litigation lasted a good part of a year. The deal was made in New York. Doesn't know of his own knowledge why the road was turned over to the S. P. Doesn't know whether the Santa Fe got tired of fighting or not.

Trouble in building P. & E.

Injunction suit.

Agreement between S. P. and Santa Fe.

(1026) S. P. had its own entrance into Phoenix before they bought the P. & E. They had that little short line of 30 miles. There is a good deal of advantage in possessing the P. & E. It enables the owner to control very large valuable territory. The Santa Fe are working pretty hard for business in that country. A person unacquainted with the P. & E. territory, would not think it a very inviting country from a business or traffic standpoint, or any other point.

(1027) Witness says beyond question it is one of the most important sections of Arizona, either agriculturally or for minerals. As to the towns that it runs through, Tempe is an agricultural town about nine miles from Phoenix. Mesa is another, a very growing

Important section of Arizona.

town. From there the road leaves to go out to the Roosevelt Dam. The dam was projected about three years ago. It is about sixty miles from Mesa to the Junction of Tonto Creek and Salt River. The latter stream flows through Phoenix. Agriculture principally carried on by irrigation. Through the irrigation of the Roosevelt Dam, it was expected to bring under irrigation 250,000 to 300,000 acres.

(1028) Everything is raised there that is grown in a semi-tropical country, oranges, olives, figs, dates, pears and peaches. A very desirable country for stock raising purposes. Alfalfa is a great product of the valley. A diversion dam is being built about 50 miles down the valley from the Roosevelt Dam. (1029) The diversion dam is 18 or 20 miles from Phoenix, and is practically completed. In an irrigation project of that kind, water is distributed through main and lateral canals. Between 200,000 and 300,000 acres will be put under irrigation by that scheme. There is a large amount of mines being opened up. Some of them have been done beyond where the line has been built. The shortest route into Southern Arizona from Los Angeles at present is over the S. P. Phoenix is locally the great wholesaling town of that region.

Products.

(1030) Los Angeles is a wholesale distributing center. Arizona does a great deal of business with the east—with Chicago, New York, Kansas City and St. Louis. When the new line is completed up to Bengal, it will be the most direct route into Phoenix, but there will be a little difference in distance. The distance into Benson, and thence to Bisbee and Douglas by the Santa Fe line, if it had been continued down to Benson, would have been considerably longer than the S. P. The latter would also have had the better grade, barring one point about Benson. It is possible to get a better alignment and better grade that way into El Paso than by the present line of the S. P., but it would be longer; that is, by the Santa Fe in connection with the El Paso & Southwestern. Doesn't think the Atchison would ever use that as a through line, the line by Parker and Benson, on to El Paso. They would use the Deming line.

Benefits of new lines.

(1031) Witness thought the P. & E. one of the most important connections the Atchison could possibly have. Witness understood that the reason for surrendering it was that it penetrated S. P. territory, and it was something the Atchison had better give up. Other reasons for the sale were the general relationship between the Companies. (1032) Exhibit 104 contains a statement that such sale shall be completed simultaneously with the execution of a certain Trust Agreement between the Southern Pacific, the Atchison Company, and the Farmers' Loan and Trust Company, which refers to the amalgamation of the Santa Fe and Southern Pacific lines in northern California. Witness thought that the latter matter also influenced the Atchison to sell the P. & E. The Rock Island runs through trains from Chicago into California over the S. P., connecting with the S. P. at El Paso. Doesn't think the T. & P. run any through trains to California. They do to El Paso.

P. & E. an important Santa Fe connection.

Northern California lines included in settlement.

(1033) If the Santa Fe had retained the P. & E., and built the link of 80 miles to Benson, these lines would have had another route from El Paso over the El Paso & Southwestern on into California. With the exception of the S. P., Phoenix has no outlet to Gulf ports, unless they go up over the main line of the Atchison, and then come back over the Prescott & Phoenix, a very roundabout route. (1034) If the Atchison had retained the P. & E., Phoenix would have had connection at El Paso with all those Eastern roads. The Rock Island train is turned over to the S. P. at El Paso. The Rock Island has no running rights over the S. P. The Rock Island crosses the Atchison north of El Paso in New Mexico, and could run over the Santa Fe, if they wanted to. If they climbed over the mountains that way, they would have a short line. Witness marks upon Exhibit 107 (being a map of the Santa Fe System), what he describes as the low grade line between Chicago and California. It is marked in red ink and unconstructed portion is indicated by cross marks. He was told that it was unnecessary to mark any constructed line, but replied that he had already marked part of it. (1035) "Q. I want you to mark in red ink the unconstructed portions, and then describe the other afterwards."

Low grade line indicated on map.

If the Atchison had retained the P. & E., and constructed certain unconstructed lines, they would have had a low grade line from Chicago to California, not taking into account their getting down off the mountain east of San Bernardino—a good low grade from Chicago to Bengal, Cal., 125 to 150 miles longer, however. Via the Atchison from Chicago, you can go to Kansas City, thence via the Belen cut-off about Hutchinson, Kansas, (1036) and from the cut-off on to Deming. From the latter point on it is unconstructed. Since the S. P. has acquired the P. & E., the Atchison is unconstructed clear to Phoenix, but before that there was a gap of about 240 miles. Unless the Atchison people misrepresented facts to witness, they intended to use that new line as a part of the trans-continental line.

Low grade line 125 to 150 miles longer.

(1037) From the line that witness located from Deming, it is about 240 miles to the eastern terminus of the P. & E., practically a water grade all the way, but very heavy construction work. The Santa Fe are beginning to use the Belen cut-off for trans-continental business. Going west it connects with the main line somewhere near Rio Puerco. By main line means Santa Fe Pacific. Albuquerque is left out. The Belen cut-off was constructed in the interest of the present main line of the Atchison, in order to avoid mountain grades, but witness stated that at that time "we were considering this other line, too, and building it." (1038) Witness thought it was intended to extend the Belen cut-off eastwardly to the Pecos Valley line which runs through what is called the Panhandle of Texas, to avoid the high grades. The Atchison were being charged with trespassing on S. P.'s territory, but in building

Belen cut-off.

the low grade trans-continental line they were protecting their own interests.

(1039) Witness thought it would not have been a waste of money to have built the P. & E. exclusively either for trans-continental business or for local business. Thinks it would have been a good proposition for both purposes. No doubt about it. Knows that Atchison reserved trackage rights over the P. & E. at the time of the sale, and that the S. P. agreed to give trackage rights from Bowie or Lordsburg to Deming. (1040) Under the terms of the contract the S. P. is also entitled to trackage over the Atchison lines from Mojave via Bengal to Wickenburg. The line under construction from Bengal to Wickenburg is about 200 miles. If the S. P. should use trackage over the Atchison under the agreements, from Mojave to Phoenix, thence over the P. & E. to Lordsburg, the S. P. line from Mojave to El Paso would be much shortened. The agreements for trackage reserved the right to the Atchison for a through line, probably as good a through line as witness would have built by way of Phoenix to Deming. Also reserved a through short line for the S. P., if the road is ever built.

Trackage rights reserved by S. P. and Santa Fe.

(1041) The construction of the P. & E. was commenced in 1902, and 96 miles of it were built in 1904. Probably 30 or 40 miles additional would connect it up with the S. P. line, which runs northwesterly from Bowie to Globe. To extend it on from its present terminus, to Lordsburg, and connecting there with the S. P., would be about 183 miles. Deming is about 60 miles east of Lordsburg. (1042) Witness considered the S. P. people's opposition very high handed. Sold to the Atchison twice. First in 1902, but they seemed to be afraid it was going to get them into trouble, and a few weeks later they gave it back. First sold the surveys and right of way, and the concessions that he had been able to get. A few weeks after that, when the Atchison found out witness was going to build irrespective of them, they bought it the second time.

Construction of P. & E.

(1043) The Atchison then sold it to witness after 80 or 90 miles, about 96 miles, had been built. Witness built the Prescott road. Commenced construction in about 1890, from Ash Fork on the main line of the Santa Fe. Completed it in the Spring of 1895, a line of about 200 miles. Never had any other railroad experience, except he had built several branches for the Atchison. Thinks the Atchison made a mistake in selling the P. & E. Witness more familiar with the Arizona situation than Morawetz or Ripley. Thinks the Southern Pacific took the Phoenix and Eastern over in 1907. Thinks the contract was closed somewhere along in May that year, and that there was a period of several months prior to the papers being signed up when it was generally understood that some kind of an agreement had been reached. Witness had never been in peaceable possession of the canyon. He was not even in peaceable possession of the line he was contending for. Explains his direct testimony as to being left in peaceable possession

Was never in peaceable possession of canyon.

after the decision of the Supreme Court, as follows: "I will explain what I have reference to. We had some very heavy floods, and some of our embankments were washed away, and the Eastern Arizona had some grading men working up in the canyon, doing a small amount of work, and before we could get down there they moved down and jumped onto some ground we had to move our track on to, so that we were not in a position to locate our (1045) line where we should have located it, and we would have incurred a great deal of expense in putting it back where it was; so we entered into a little temporary arrangement with the Southern Pacific people who had gotten onto that piece of ground that we needed, and we were using their tracks; but the litigation that was in court, as I understand it, had already been settled. But that question remained there—that little bit of a gap that we had to use over their piece of track we were using." Began to use that little piece of track in the spring of 1906, possibly 1907. Hostilities on the ground ceased when he got his road completed to Winkelman. Gives 1906 as the date he mentioned as the one when he secured peaceable possession. The matter was in litigation from 1904 to 1906, his line having been completed to its present terminus in 1904. Witness thought the nearest point of the S. P. from the Roosevelt Dam was about 60 miles. Their branch running up to Mesa is the nearest point they have reached, witness thought. The flow from the Roosevelt Dam is southwesterly toward the S. P.

Portion of P. & E. right of way washed out.

The P. & E. runs south of the dam. The irrigable section extends practically 50 or 60 miles clear to the City of Florence on the Gila. (1046) You wouldn't notice when you cross the Divide between the Gila and the Salt, but would think you were going over a level country. Florence is 25 or 30 miles north of the S. P. The main line of the S. P. is nearer Florence than any branch. The P. & E. goes practically through Florence. Maricopa and Phoenix lies 50 miles west of Florence. Right of way of P. & E. has been obtained from Phoenix to Benson practically. Practically all the work of construction was done after the Atchison acquired the stock.

NEW YORK CITY, MONDAY, JANUARY 11, 1909.

(1406) FRANK MURPHY. Testimony resumed.

The easterly junction of the Belen cut-off and the Atchison is Newton, Kansas. (1047) The Junction is at Texico, on the border of New Mexico and Texas. By using the Belen cut-off the Santa Fe avoids altogether in its trans-continental line the Raton pass and the Glorieta Pass. (1048) Exhibit 108, Map in the Annual Report of the Atchison, showing in a general way its lines. Witness asked to take a pen and mark on the map the proposed line from Dudleyville to Deming, and put crosses over the red ink line just drawn. The black line from Phoenix to Dudleyville was built by the P. & E. Witness asked to indicate on the

map the low-grade trans-continental line that he has testified about, which the Atchison would have had if it had kept the P. & E. Thinks it would have started at Newton, Kansas, then to Texico, N. M., to Belen, crossing Oklahoma and the Northern end of Texas, thence down the Rio Grande to Rincon, and from there to Deming, then over the line marked by witness, and the P. & E. to Phoenix. Description of low grade line.

(1049) It would take up with the Prescott road at Phoenix, and run to a point about six miles north of Wickenburg, and thence almost due west to a crossing of the Colorado River at Parker, and thence to a point on the Santa Fe main line at Bengal. The line from Wickenburg to Bengal is now under construction. Proposed new line is about 150 miles longer, between Chicago and Los Angeles. The figures taken from the Official Railway Guide make the present main line of the Santa Fe from Chicago to Los Angeles. 2,267 miles by way of Ash Fork. (1050) The line witness sketched out would be 2,417 miles. At the time the P. & E. was sold, the S. P. had a parallel road running out of Phoenix to Tempe (their Maricopa line), also a spur line to Mesa, the latter point being 17 miles from Phoenix. Florence is the next town of consequence, after leaving Mesa. The latter part of the work on the P. & E. was construction for heavy engines. On the line from Wickenburg west, light rails (about 62 or 65 pounds) were used, but the bridge is constructed for the handling of the heaviest engines, for through trans-continental business. (1051) Witness, about 1893, incorporated another company to continue the line from Winkelman to Lordsburg. Thought it was called "The Gila River Railroad." The El Paso & Southwestern connects with the Mexican Central at El Paso, the latter running to the City of Mexico. If the Atchison had extended its line through the Gila Canyon to Deming, it would have had to build about 25 miles to get into the mining district around Globe. Main line of Santa Fe. Gila River railroad.

(1052) A great many mines between Dudleyville and Phoenix on the P. & E.; gold, silver, copper and lead, principally copper. Doesn't know of much ore going out of those mines now. Before the Humboldt smelter was closed, before the Atchison sold the P. & E. to the S. P., the ores came to the Atchison on the Prescott road. Went up to Prescott, and then out to the Humboldt smelter. The smelters of the Copper Queen and the Calumet & Arizona Companies are at Douglas. There are large smelters at El Paso, the American Smelting & Refining Company's. (1053) Witness' final maps in Washington were not accepted until 1906. That was the conclusion of the litigation in the Land Office. Completed the road to Winkelman in 1904. Line was turned over to the S. P. in the Spring of 1907. The Maricopa line parallels the P. & E. about nine miles, and the branch to Mesa added about as much more. Mineral resources.

(1054) After you leave Tempe, about nine miles from Phoenix, the Maricopa & Phoenix is at right angles to the P. & E. The Gila River Railroad Company never constructed any railroad.

Mines on P. & E.

(1055) The mines on the P. & E. had just started to ship to the smelter at Humboldt. Had been doing so eight or nine months, when the sale was made and the rates changed. After the purchase, the S. P. was naturally disposed to take the ores to El Paso. (1056) Witness' testimony based on existing conditions, does not in any sense portray the situation from a railroad standpoint. A piece of road was being built, and the people were laying their plans for the development of that section of the country, and were making their calculations upon the direct outlet. They were holding in reserve a lot of important developments, and waiting for the better opportunity that would be afforded when they got their outlet via Benson and Deming. It consisted in the development of mines and the erection of smelting plants.

(1057) About a couple of hundred thousand acres in the Salt River Valley have been under irrigation for a good many years. Their permanent water supply would seem to be secure now. Humboldt is about 250 miles from the mines on the P. & E. Before the sale, the Atchison had no through rates from this locality with the S. P. to El Paso. The conditions now are simply reversed. The S. P. established through rates to the smelters at El Paso and Douglas. (1058) Conditions not as favorable now as before. Witness couldn't speak positively about the exact rates. At the time of the sale of the P. & E., business over it was not heavy. It was in a stage of development.

Through rates.

Hughes.

(1059) GEORGE M. HUGHES.

Brooklyn. Formerly contracting freight ag't., Milwaukee road.

Resides in Brooklyn. President of the New Jersey, Indiana & Illinois Railroad Company, running from South Bend south to connection with the Wabash. Connected with the Erie from 1863 to 1884, and from then until 1894 with the Milwaukee & St. Paul, as contracting agent in New York. When Mr. Hawley was agent of the S. P. here, the trans-continental lines west of the Missouri River were in active competition for Pacific coast business. Witness worked more especially with the U. P. Couldn't work with the S. P., because his road went to Omaha at that time.

(1060) The Northern Pacific, the Canadian Pacific, and the Atchison were also competing with Mr. Hawley. In addition to railroad business, witness is now forwarder of the Singer Mfg. Co. Routes their freight. Their trans-continental freight now moves by the American Hawaiian Line, via Tehuantepec. Very much cheaper than the all-rail lines. Previously routed sewing machines via the Morgan Line. (1061) The American Hawaiian Line runs to Puerto, thence across Mexico to Salina Cruz, and up to San Francisco, and to Portland, and witness thought also to Seattle. Shipped very little by the U. P. to the coast. The rates by the Sunset and U. P. were the same, but the service by the former was better. Less damage from handling. Solicitation not quite as active. The U. P. comes in and wants to know if there is any change, and witness replies: (1062) "Not at present." Prefers

Routing of Singer Sewing Machine business.

the S. P. on account of carload shipments, which seem to be handled better. The road of which witness is president is 12 miles in length. The Singer people ship their Pacific coast trade from Elizabethport. When he spoke of competition between the Southern Pacific and the Union Pacific he meant competition of the Sunset Route on the one hand, and competition made up of the all-rail lines, including the Union Pacific from Omaha to Ogden, and the Southern Pacific from Ogden to the Pacific Coast. (1063) All the roads leading out of New York and Chicago naturally solicited for trans-continental business. Worked to help the U. P. get it as against the Sunset. Worked in order to get it themselves.

(1063) W. J. L. BANHAM.

Banham.

About four years Traffic Manager of the Otis Elevator Company. Previously was with the International Steam Pump Company, in charge of shipping; later as Asst. Traffic Manager. (1064) Was with them five or six years. The Otis Elevator shipments moved to the Pacific coast all-rail. From Missouri River they would ship about equally over the Santa Fe and the U. P. Where there are two or three more lines reaching into a particular town, the time of delivery and the location of freight yard or the delivering point determine the movement. Time is a more important factor with us than anything else. Solicitors work merely through personal solicitation. They might remind the shipper at times that there were certain unpaid freight claims, the payment of which they would obtain.

Traffic Manager Otis Elevator Co.

(1065) Doesn't ship by the Sunset. In transferring electrical apparatus from ship to car percentage of breakage would be enormous. Witness loads the machinery on the car, and has it take the most direct route. The sea air is not good for their shipments. His business is at present solicited by the S. P. all-rail via New Orleans. Only uses that route when there are blockades in the west. Otis Elevator's main shipping plants are at Boston, Springfield, Yonkers, Philadelphia, Rochester, Buffalo, Detroit, Chicago, and Moline. Ship principally to the coast from Yonkers, Chicago and Buffalo. To the North Pacific coast would ship over the Great Northern and Northern Pacific. Also used the U. P. to Portland.

Breakage incident to transfer.

(1066) When witness sees the conditions in Portland are in favor of one line against the other, he uses the former. Does not ship to the Orient. They have not gone in for sky-scrapers yet. Doesn't ship to Portland by the S. P. West of Chicago shipments are divided between the Atchison and the line made up of the S. P., U. P. and connections east. All shipments by way of the U. P. go over the S. P. from Ogden to California, and are solicited both by the S. P. and U. P. All the companies owning any part of the trans-continental lines, the New York Central, etc., solicit business actively. (1067) Southern Pacific agents solicit business by way of the U. P. from Chicago, and Moline. Do also from Buffalo, if they cannot get it via the Sunset. At Chicago the S. P. and U. P.

S. P. agents solicit via U. P. from Chicago and Moline.

agent is the same man. Witness was not an active traffic manager prior to 1901.

Swope.

(1068) CHARLTON A. SWOPE.

New York. Traffic Dep't. L. & N.

Resides in New York City. For five years Eastern Freight Agent of the L. & N. Previous to that for five years Traveling Freight Agent of the same road, and prior to that for thirteen years a clerk in the general offices at Louisville. Secretary of the Traffic Club. Witness came to New York in 1898 and between that time and 1901 there was competition to trans-continental points between the Union Pacific, Southern Pacific, Santa Fe, Northern Pacific and Great Northern. (1069) Witness, while representing the L. & N., to a certain extent, solicited business for trans-continental points in connection with the all-rail route via New Orleans. Witness' territory is east of the Buffalo-Pittsburg line. Endeavored to secure freight from the Cincinnati and Louisville territory and route it via New Orleans, or, in some cases, Memphis and El Paso. L. & N.'s interest entirely with the Sunset route as against the Ogden route. Still continues to do that. The volume of such business via New Orleans is very small. All the trans-continental lines solicit.

Solicited business via New Orleans.

L. & N.'s interest entirely with Sunset.

Number of roads forming links in trans-continental lines.

(1070) Counting all the roads forming links in trans-continental line, there are certainly 50 or 100. Any business for the Pacific coast south of Portland, from Ogden, would go over the S. P. U. P. extends from the Missouri River to Ogden. There are a good many lines over which traffic moves from New York and New England to New Orleans, of which the L. & N. forms a link. Not quite so many available routes, because the trunk lines are more largely interested in the Ogden route, because of their slightly greater haul that way.

(1071) A great many lines east of the Missouri River gateway and comparatively few west. There are many lines east of the Mississippi gateway. Less lines from there to the Missouri River gateway, and still less trans-continental lines from the Missouri River to the coast. (1072) From New Orleans to the Pacific coast there is only one line that has a terminal line. There are others that are connections of the S. P. There is the Texas Pacific through New Orleans to El Paso. Its western terminus is at El Paso, but it connects with the Missouri Pacific. Describes terminal lines reaching the Pacific coast.

Gregory.

(1073) J. ALLEN GREGORY.

New York. Traffic Manager Central Foundry Co.

Resides in New York City. Traffic Manager of the Central Foundry Company. Describes location of foundries. (1074) At present ships to the Pacific coast from plants at Anniston, Ala., and South Pittsburg, Tenn., and Vincennes, Ind. Traffic to California moved over the S. P., Atchison and U. P. Over the S. P. from Anniston, and seldom from South Pittsburg. Over the U. P. from Vincennes and South Pittsburg; and sometimes from Anniston,

and over the Santa Fe from all of them. The rates over the three lines are the same. The U. P. and Atchison and its connections actively solicited. To the North Pacific coast witness ships over the Great Northern, the U. P., and the Northern Pacific. Routing of his traffic

(1075) Shipments from Anniston over the S. P. go via New Orleans. From South Pittsburg shipments sometimes go by the Frisco-Rock Island line to El Paso, but as a rule over the Iron Mountain route and the Missouri Pacific to El Paso. From Anniston over the L. & N. to New Orleans. Some of the Anniston business goes out through the Memphis gateway, Frisco to Kansas City, and thence over the Atchison. Occasionally a car goes through Kansas City over the U. P., then S. P. into San Francsico. Doesn't ship by Chicago. (1076) Has never shipped to Portland by the S. P.

(1076) JACOB SCHIFF.

Schiff.

Witness lives in New York. Is a banker and a partner in the firm of Kuhn, Loeb & Co. Mr. Otto H. Kahn is one of his partners. That firm has been in existence about 40 years. Witness identifies complainants' Exhibit 109, being the plans of reorganization of the Union Pacific. It is offered in evidence and set forth on pages 1077 to 1098. New York. Partner in firm of Kuhn, Loeb & Co.

(1098) Witness was one of the reorganization committee. Kuhn, Loeb & Co. were the bankers of the committee. A reorganization syndicate was organized under the management of Kuhn, Loeb & Co. The present Union Pacific Company took over the properties and commenced business in the beginning of 1898. Witness was a member of the board of directors up to April, 1906. Mr. Kahn was also a member of the board at the same time. Reorganization of U. P.

(1099) Witness recalls the issuance of $100,000,000.00 of convertible bonds of the Union Pacific. They were bought by his house. They were issued to put the company in funds. The first part to the extent of $40,000,000.00 was sold to put the company in funds to pay for its purchase of Southern Pacific stock. The purchase was financed for the Oregon Short Line Railroad Company by the Union Pacific. Witness was asked if at the time the Northern Pacific and the Great Northern purchased the stock of the Chicago, Burlington & Quincy, or prior to the date of its consummation, Mr. Harriman and himself had any conversation with Mr. Hill, or the parties who were negotiating that purchase with reference to securing an interest in the purchase. Witness answered as follows: "As far as I can remember—this is a matter of seven or eight years ago, but as far as I can remember, there were either one or two discussions between Mr. Harriman and Mr. Hill, and I believe I was present at least at one of them, in which the general aspect of the situation was discussed, and in which Mr. Harriman objected to the Burlington & Quincy passing into the hands of (1100) Northern Pacific and Great Northern, and insisted that it should be kept independent. He said that the Union U. P. convertible bonds. Purchase of C. B. & Q. by Hill lines.

Pacific was perfectly satisfied with the position of the Burlington and Quincy as it existed, and he thought it was inadvisable that it should be attached to the two northern corporations, or either of them."

Witness knew that if the purchase was made by the two northern companies that the Union Pacific desired to have an interest in it. So far as witness can remember that conversation was in the spring of 1901. Cannot say whether it was in April or May. Mr. Hill declined the suggestion. Witness recalls that his firm bought a large amount of Northern Pacific stock in the spring of 1901 (1101) and that it was resold to the Union Pacific or the O. S. L. after a very short time. The first purchase of Northern Pacific stock was made by his firm without conversation or conference with anybody. "We only informed Mr. Harriman, after we had started purchasing Northern Pacific stock that we had done so." Finally the Union Pacific had acquired a majority of the outstanding Northern Pacific stock counting the preferred and common stock together. Believes the object of purchasing Northern Pacific stock was to continue, if possible, the statu quo as far as the Burlington and Quincy was concerned—to keep it independent.

Purchase of N. P. stock.

"I think the Union Pacific managers felt that if they controlled the Northern Pacific, which they had no desire to control because it was the Northern Pacific—but if they did control the Northern Pacific, which at that time together with the Great Northern had accomplished the purchase of the Burlington & Quincy, they might still be in a position to enforce independent management of the Burlington & Quincy." (1102) "Q. What interest did the Union Pacific have in what was done with the Burlington? A. While it was to some extent a sharp rival, it was always able to get along with it, but the managers of the Union Pacific did not know, with two new interests coming into that territory, what might become of the Burlington, and what havoc might be played with existing competitive conditions, which were entirely satisfactory."

To enforce independent management of C. B. & Q.

(1104) Witness knows of certain conversations had by Mr. Harriman with Mr. Ripley and Mr. Morawetz in or about the year 1904, with reference to the Santa Fe. Not clear as to whether he was present or not. Thinks he was present at one conversation but not more. The conversation inquired about related to representation which Mr. Harriman and witness and their associates desired to have on the board of directors of the Santa Fe. Witness knew that at that time requests were made upon the Santa Fe people for representation of himself and his associates.

Representation on Santa Fe directory.

(1105) The other gentlemen included as associates were Mr. Wm. Rockefeller, Mr. Henry H. Rogers, Mr. James Stillman. Witness and his associates had been purchasing a large amount of the common stock of the Santa Fe, and under the laws of Kansas were entitled under the cumulative system of voting, to two directors, and wanted them without resorting to cumulative voting. They asked that Mr. Rogers and Mr. Frick be placed on the Santa

Fe Board. Witness does not remember that any other names were suggested. They wanted representation on the board to know that their interests were properly protected.

(1106) Witness states that it is but usual and natural that large stockholders should want to be represented on the board of managers. Witness knew of nobody in the syndicate who was dissatisfied with the Santa Fe method of operation. As far as Kuhn, Loeb & Co. were concerned they purchased Atchison stock because they considered it cheap; and for no other reason. Does not agree with Mr. Harriman's testimony in this respect. Does not remember that the matter of establishing better relations between Union Pacific and the Santa Fe was discussed. It may have been discussed with Mr. Kahn when the witness was not present. "It is probable that in purchasing stocks, different participants had different purposes. As I have already stated, our purpose was to invest in Atchison stock because we considered it very low (1107) in price; and it may have been said, even if I do not remember it now, that it would be an advantage if friendlier relations than existed could be obtained in consequence. That may have been stated. Even if I do not remember it, it may still be a fact that that might have been stated."

Kuhn, Loeb & Co. purchased Atchison because it was very low.

"Q. Mr. Schiff, this stock that you and your associates owned at the time of the discussions about representations on the Atchison board was stock that you gentlemen owned and not stock of the Atchison that the Union Pacific owned; isn't that true? A. That is correct. Q. You were representing the personal interests of yourself and your associates in these discussions. A. That is correct." At the time of the conversation with Mr. Hill about the purchase of the Burlington, that company owned a line extending from Chicago to Omaha where it connected with the Union Pacific. It also owned a line as far westerly as Denver, where it connected with the Union Pacific again. Then it connected with the Union Pacific at other points in Nebraska, Colorado and Wyoming. It was a system that originated a great deal of traffic.

Representation on directory requested because of stock owned personally.

U. P. connections with Burlington.

"Q. One of the effects of the control of the Burlington by the Northern Pacific and Great Northern would have been to divert to those lines as against the Union Pacific Lines—or the tendency would have been to divert to those lines as against the Union Pacific lines—such traffic as originated on the Burlington lines for the Pacific Coast, would it not? (1108) A. I have no doubt that would have been possible." Kuhn, Loeb & Co. never started in to buy control of the Burlington. At the time witness and his associates purchased this Santa Fe stock, that is to say, Mr. Kahn, Mr. Harriman, Mr. William Rockefeller, Mr. Henry H. Rogers and Mr. Stillman, they were all members of the Union Pacific board. Mr. Wm. Rockefeller was not.

Effect of C. B. & Q. control by Hill lines.

(1109) STUYVESANT FISH.

Fish.

Former Pres't. Ill. Cent.

Lives in Putnam County, N. Y. In the railroad business nearly

all his life. Connected with the Illinois Central since 1871. For the last twenty years, down to 1906, as President. It runs from Chicago to New Orleans, from Chicago to Omaha. Reaches St. Louis, Louisville and Memphis. The only points at which the Illinois Central reaches the Missouri River are Sioux City and Omaha. Up to 1901, U. P. and S. P. were competing for Illinois Central business, the former at Omaha, the latter at New Orleans. (1110) Competition between those two railroads covered the whole territory reached by the Illinois Central. Rates were the same, and Illinois Central routed business indifferently, as suited them best. At one time sold passenger tickets which were good to go one way and come back the other.

Competition for Ill. Cent. traffic.

(1111) Witness thought it would be feasible to work San Francisco business via the U. P. to Portland, and then down by boat. Boat lines had considerable effect on rates over the trans-continental rail lines. Witness thought you could generally count the steamboat line, if it didn't exceed five times the length of the rail line, as something that would compete. The business of the Illinois Central from Chicago to New Orleans is a miscellaneous business, diversified. Coal is the largest item. It picks up some business for the coast at intermediate points between Chicago and New Orleans, delivered to it by other lines from the East—Louisville, for instance—but not a great deal of it. (1112) The whole policy of the road was to make no permanent alliances, but to deal with its connections as it thought best in its own interest from time to time. Sent business over the route which would give most revenue. Illinois Central at one point or another connects with all the lines that cross the Missouri River or lie west of the Missouri River and with all the lines extending from Chicago or St. Louis or the Missouri River westwardly.

Effect of boat lines on rates.

(1113) Witness thought there were through rates to the Pacific Coast with all these lines. Illinois Central treated those lines best that treated it best, purely as a selfish policy. (1115) All the various lines forming links in the lines to the Pacific coast were competing for business originating on the Illinois Central. Doesn't know whether any business from the east for San Francisco ever moved by Portland. Not familiar with that branch of the business, and in expressing his opinion didn't testify as an expert with respect to that locality. Had in mind the Sunset route and the Morgan steamers. (1116) "Q. What I want to know is what circumstances you base your opinion that it is a feasible transportation route for the Union Pacific by way of Portland to San Francisco. What are the circumstances on which you base that opinion, if you wish to be understood as expressing a definite opinion on the subject? A. The Union Pacific had their own line of rails, with their affiliations—the east lines controlled by them—up to Portland, and the market is San Francisco, and the sea is open to them, and I understand they had a line of steamers there for some time on that route. Q. And it is upon those circumstances that you base

All lines competed for coast business.

Portland route.

the opinion that that is a feasible route for the Union Pacific, is that correct? A. Yes, sir. Q. You don't know what other circumstances, from a traffic standpoint or otherwise, or a transportation standpoint, may exist that would make that entirely impracticable from a railroad or traffic standpoint, do you, Mr. Fish? A. No, I do not." (1117) Does not think it would be quite as feasible for the Northern Pacific to move traffic from its eastern termini to San Francisco, by way of Tacoma, or Seattle, or Portland, as for the Union Pacific. Portland is 100 miles inland on the Willamette River.

(1118) EDWARD T. JEFFERY.

Jeffery.

Lives in New York, and for 52½ years in the railroad business. Has been connected with the Illinois Central and Denver & Rio Grande. Also director in several other railroad companies. Chairman of the Board of Directors of the Wabash, and President of the Western Pacific. The latter is now under construction from Salt Lake to San Francisco. Began active construction about three years ago. Has been President of the Denver & Rio Grande for 17 years and 4 months. It runs from Denver via Colorado Springs and Pueblo to Salt Lake and Ogden, with numerous branches.

New York. Pres't. D. & R. G.

(1119) Originally it ran to Grand Junction, and there connected with the Rio Grande Western to Salt Lake and Ogden. The control of the latter was acquired about seven years ago, and the two companies consolidated a few months ago. It owns two-thirds of the capital stock of the Western Pacific. On the east of Denver it connects with the Burlington and the U. P., the Missouri Pacific at Pueblo. Also connects with the Rock Island and Atchison at Denver, Colorado Springs and Pueblo. Witness was connected with the Illinois Central 33 years, the last four or five years as General Manager. Before that time General Superintendent and Acting Chief Engineer. The Sunset route competed with the all-rail lines to the coast, including the U. P.

D. & R. G. connections.

(1120) The consolidation of the S. P. and U. P. eliminated the free interchange that there was between the S. P. and D. & R. G. system at Ogden and at Salt Lake "to an extent." The common control has inevitably reduced the interchange of business with the D. & R. G., a competing line. The east-bound business was gradually diverted from the Denver & Rio Grande to the U. P. Some was doubtless taken by the Atchison at San Francisco. The D. & R. G. maintain commercial agencies at San Francisco, Los Angeles and Portland, and since 1901 these agencies have been rather stimulated to greater effort.

Effect of U. P. and S. P. consolidation.

(1121) Tonnage delivered to the D. & R. G. by S. P. less since 1901 than before. The business to the Pacific coast in general has, however, increased. Formerly had considerable business in and out of Portland over the O. S. L. via Salt Lake, and the same over the S. P. It was a somewhat diversified traffic, considerable lumber, some sheep, cattle, wool, fruits, hops, some Oriental traffic. Oriental

Traffic from Portland.

traffic brought by ships to Portland. Sometimes got Oriental traffic by way of San Francisco. Shares very slightly in that now. Gets no cargoes from Portland and the Orient now. S. P. still maintains through rates with the D. & R. G. via Ogden. (1122) The Oregon Short Line maintains through rates with the D. & R. G. only to a limited extent. A number of the divisions of rates have been taken out. Prior to 1901 the Ogden gateway was free and unrestricted. The S. P. and D. & R. G. have substantially the same rates and divisions on California business that they had prior to 1901. The difference is that since 1901 as to unrouted traffic, the S. P. has preferred the U. P. Where D. & R. G. agents on the Pacific coast obtain control of business and route over the S. P. and their lines, the S. P. respects the routing.

Ogden gateway.

Same divisions with S. P.

(1123) The S. P. agents solicit business in connection with the U. P. Those roads work together against the D. & R. G. The construction of the Western Pacific was made necessary by the changed attitude of the S. P. toward the D. & R. G. (1125) Westbound the D. & R. G. gives a very much larger amount of business to the S. P. than east-bound it receives in return. It has no other channel open for its west-bound traffic. East-bound the S. P. has the U. P. and "the excellent facilities that that system possesses." (1126) Since the S. P. formed a part of the all-rail route from Ogden west—eliminating the Sunset route—in either case, the competition which formerly existed was between the U. P. and the D. & R. G. and its eastern connections. Witness thought that was largely so. Would not say wholly so. Entirely so with the S. P. It got the traffic at Ogden, no matter whether the U. P. or D. & R. G. carried it.

Necessity of building Western Pacific.

(1128) The competition for the trans-continental traffic east of Ogden, except such as went by the Sunset route, was between the U. P. and the D. & R. G. and its connections. Traffic from the Atlantic seaboard, and any points west of the Atlantic seaboard, was always competed for by the Morgan Line. (1129) Business that the D. & R. G. formerly received from Portland via the S. P. came by way of Sacramento over two severe mountain ranges. The Sacramento gate is closed, and whatever the D. & R. G. agent is able to get at Portland must come over the Short Line. (1130-1131) Most of the through rates between the D. & R. G. and O. S. L. have been withdrawn, and D. & R. G. does little Portland business. Witness hesitated about saying the competition of the Central Pacific portion of the S. P. was eliminated, because business could go from the east to San Francisco all water, or by the Sunset route and then be carried to California and Nevada points by the S. P., or it might go all rail through Ogden to the same points. By consolidation of U. P. and S. P., witness' ability to compete with U. P. greatly diminished.

Portland business via Sacramento crosses two severe mountain ranges.

NEW YORK, TUESDAY, JAN. 12, 1909, 2 P. M.

(1132) VICTOR MORAWETZ.

Morawetz.

Chairman Executive Com. Atchison road.

In 1895 was a member of the Committee that reorganized the old Atchison system; counsel of that committee. When the new company was organized and took over the properties on January 1, 1896, became a member of the Board of Directors and Executive Committee, and General Counsel. Two years ago (1133) resigned as General Counsel, but continued to act as Chairman until last October, and has since had no official connection with the Company. While Chairman of the Executive Committee was quite familiar with the affairs of the Company, except operating and traffic matters; probably more familiar than any one, with the policy of the Company, so far as it was directed by the Board of Directors.

"In 1901 the Atchison company bought the stock and second mortgage bonds of the Santa Fe, Prescott & Phoenix Railway Company. At that time Mr. Frank Murphy was the president of the company. On account of Mr. Murphy's familiarity with the property and with the territory through which the line runs, and on account of our respect for his ability and his character, he was requested to continue to act as president of the company, and he has so acted until the present day. At that time Mr. Murphy had a project to build an extension from Phoenix to Benson. When we took the property over we did not favor building that line. It did not seem to me that the line would be profitable as an investment; it would be no part of the Atchison through line; traffic could not advantageously be sent via Phoenix over the Santa Fe, Prescott & Phoenix to Ash Fork and then around over our main line. The local business in prospect did not seem to me very attractive. Agricultural business there was none, and there were no developed mines along the line, but merely prospects; and of course mines are proverbially uncertain, and after they are played out there is nothing for a railroad to look forward to. For that reason I was not in favor of spending the capital of the Atchison system for the construction of that line. Mr. Murphy was very enthusiastic about it, and subsequently decided that he would cause the line to be built anyhow. When it became apparent that the line was going to be built, I advised Mr. Ripley that I thought if that line was to be built, we had better build it ourselves; and it was arranged, in substance, that we should build the line as far as Dudleyville. Mr. Ripley was not disposed to go down the San Pedro Valley to Douglas, because—— MR. SEVERANCE. Benson, you mean?

Projected line from Phoenix to Benson.

Did not favor project.

As Murphy intended to build anyhow, thought Santa Fe had better do it.

(1134) "WITNESS. To Benson, I mean—because he did not think it would pay to do so. In the summer of 1902 we concluded that it would be advisable to extend the Atchison system into the territory north of San Francisco Bay and west of the range of mountains which I believe is called the Coast Range. Negotia-

Effort to purchase California & Northwestern.

tions were started by Mr. Ripley with the owners of the stock of the California & Northwestern Railroad Company for the purchase of their stock; but pending those negotiations the stock was sold either to the Southern Pacific or to persons from whom the Southern Pacific subsequently acquired it. Thereupon, in the autumn of 1902, we bought the stock of the Eel River & Eureka Railroad, which was a short line extending out of Eureka, and which I think originally was built merely as a logging road. The traffic of that line was the redwood timber into Eureka, from where it was transported by ship. We bought that line for the purpose of obtaining the redwood traffic, and for the purpose of obtaining a foothold in the territory which, as I have stated, we desired to enter. Sometime in the autumn or winter of 1902 negotiations were begun for the adjustment of the differences existing between the Southern Pacific Company and the Atchison with regard to conditions in Northern California and in Arizona. Mr. Harriman objected quite strenuously to our construction of the Phoenix & Eastern line, because he considered that an invasion of territory properly tributary to the Southern Pacific system. Mr. Harriman desired us to sell to him the constructed part of this Phoenix & Eastern road, and to retire from the territory south of Phoenix. I stated to Mr. Harriman that the settlement of any questions as to Arizona territory, and as to Northern California territory, would have to go together. I was willing to sell the Phoenix & Eastern line, but I wanted to get into the territory in Northern California; and I then formulated the terms upon which I was willing to settle these controversial questions. These terms, in substance, were as follows:

Negotiations for settlement of differences in Northern California and Arizona.

Terms submitted.

That the Southern Pacific Company should give us a half interest —an equal half interest—in all the lines—the California & Northwestern and another line—— * * * the North Shore line, which it had, north of San Francisco Bay, amounting to approximately 400 miles, I think. We would give them a half interest in our Eel River & Eureka line amounting to about 40 miles of main line, and a few branches, amounting to less than 50 miles all together; and that all lines to be constructed in that territory as far up as Oregon, that is, up to the end of Humboldt County, should be open to the Atchison and to the Southern Pacific on equal terms. The idea of establishing a low-grade line between Phoenix and Deming, of which this Phoenix & Eastern line would be a part, was first suggested during these negotiations. I never heard of it, and it was not contemplated until that time; it was certainly not contemplated when the construction of the Phoenix & Eastern line was begun. I was more than willing—was desirous—of making a settlement on the terms which I have stated, (1135) because the Atchison Company had no money at that time for the construction of the proposed line in Northern California, which would have cost approximately twelve millons of dollars, and it had no money for the construction of the new mileage in Arizona.

Never heard of low grade line until then.

Was desirous of making settlement.

"The project of building a low-grade line up the Gila Canyon to Deming was not contemplated by us ever as a project to be immediately carried out, or to be carried out within any specific time. I was never convinced that it would pay us to build that line. It would have cost approximately ten millions of dollars to build the low-grade line between Phoenix and Deming, and it would have cost a million or two millions more to put the line between Deming and Belen in proper order for the carriage of any heavy amount of business. This low-grade line, even after the completion of the proposed cut-off between Wickenburg and Bengal, would have been about 160 miles longer than the present line between Belen and Bengal, and about 175 miles longer than the present line between Albuquerque and Bengal. It would have obviated only the objectionable grades on about 369 miles of our present line. In the winter of 1901 we took up the project of building a low-grade cut-off from Belen to our Pan-Handle Division, to serve as a second transcontinental line. The surveyors were put in the field in the winter of 1901-1902, and the line has since been constructed between Rio Puerco, which is a point west of Albuquerque to Belen, and thence to Texico, where it connects with our present mileage, and very large sums have been spent in reducing grades and curvature on our Pan-Handle line with a view to establishing a better line than the existing one between Chicago and the Pacific Coast.

Low grade line up Gila canyon not feasible.

Belen cut-off.

"Q. By the Pan-Handle line, Mr. Morawetz, you mean the line from Texico through the northern part of Texas and northwestern Oklahoma? A. Yes. I wish to state the the construction of this line had absolutely nothing whatever to do with the proposed or contemplated construction of the cut-off—of the so-called low-grade line between Phoenix and Deming. This Belen cut-off was undertaken before this so-called low-grade line between Phoenix and Deming was ever thought of; and the reasons, if you care to hear them, for the construction of the Belen cut-off were as follows: Our existing line was nearing the limit of its capacity—that is, the traffic of our existing line was reaching the limit of the capacity of that line; and looking ahead, we saw that we should, in the not far distant future, have either to double-track the mountain divisions of our existing line or get another outlet.

Reasons for its construction.

"Q. By the existing line you mean the line through southeastern Colorado by way of Trinidad? A. Yes, over the Raton and Glorieta Mountains. At that time there were rumors and indications that other systems, or at least one other system, contemplated building in the direction of the Rio Grande River; and although we would have preferred to postpone somewhat the construction of the Belen cut-off, we somewhat hastened (1136) our action because the Abo Pass was of great strategic value, and we thought it advisable to occupy that pass. We therefore began the construction of the Belen cut-off from the west and occupied the pass first, and then gradually extended it east. Another reason, and an important reason, for the construction of that line was that we contemplated,

Abo Pass.

Projected line from Texico to Brownwood, Texas.

and the Atchison company still contemplates the construction of a line from Texico in a southeasterly direction to Brownwood, Texas, which, in conjunction with the existing Gulf line of the Atchison company, will give it the shortest, and I am inclined to think, the best, line between San Francisco and the Gulf of Mexico. In connection with this Belen cut-off it was proposed to reduce the grades on the existing line to six-tenths of one per cent. a mile as far west as Winslow. When that construction is completed there will be but 369 miles of road between Bengal and the east which is not a six-tenths grade, except as to one or two pusher grades or doubling grades.

"Mr. Harriman objected strenuously to the terms which I demanded of him, and the contest for the location of the Phoenix & Eastern line, which has been referred to in the testimony, took place because he was unwilling to accept the terms which I demanded. About September, 1904, while this controversy was still going on, I was informed by Mr. Harriman that he and some of his associates in business had purchased about 300,000 shares of Achison stock, and he asked for representation on the Board of Directors. I stated to him that I would never willingly give any representation on the Board of Directors to the Union Pacific Railway or to any rival company. He stated to me that not a share of that stock was owned by the Union Pacific Railway Company or the Southern Pacific Company, but that it had been bought by himself and several gentlemen who were associated with him as a private investment, because they believed in the Atchison property and in the country through which its lines ran. The gentlemen, I may say here, who were associated with Mr. Harriman, were Mr. Rogers and Mr. William Rockefeller, Mr. Stillman, and Mr. Schiff, or his firm, Kuhn, Loeb & Company. I stated to him that I would not be willing to give any of these gentlemen a place on the Board of Directors until the differences existing between the Atchison and the Union Pacific Company had been adjusted; but if those differences were adjusted I would be willing to give to those gentlemen some representation on the Board of Directors in view of their personal holdings, with the understanding that the nominees would be acceptable and satisfactory to my own Board of Directors.

Purchase of Atchison stock.

Private investment.

Representation on directory.

"I further stated that I would not be willing to have any of the executive officers, including himself, on our Board of Directors. There was a little difference of opinion between us on that point. Mr. Harriman and I had discussed the subjects—the general railway policy—on more than one occasion, and he urged that the management of great railway systems—the different great railway systems in the country—should deal with each other openly, fairly, and in a broad spirit of live and let live; and I agreed with him as to that general policy. I (1137) remember telling him that it was my belief that many, if not most, of the abuses in railway management were due to a failure to observe that policy, and to attempts of the officials of rival companies to obtain advantages over the others

through petty methods and sharp practices; but I told him that I did not believe in having the officers of one company upon the Board of Directors of a rival company. He did not agree with me as to that, because he suggested that he should go on the Atchison board, and he offered me a place on the Executive Committee of the Union Pacific or the Southern Pacific (I don't remember which.) At the time of the annual meeting of the stockholders in October, 1904, the differences to which I have referred had not been adjusted; but before I went out to the meeting Mr. Harriman handed me proxies for about 280,000 shares, but with the understanding that I would not use them unless in the meantime we had reached an agreement. The points open at that period of the negotiations were very few. * * * Well, one point was this, as I recall it. He had finally agreed that if the other terms of the settlement were carried out, the Southern Pacific would build a low-grade line between Phoenix and Deming, and give to the Atchison company an option, whenever it wanted, to take trackage rights over that line on very favorable terms—terms which would give us the use of that line for less than half of what it would cost us if we had built it ourselves. But he wanted to hitch on to this grant of trackage right a condition that we would not use the line for traffic to El Paso which there would be exchanged with the Missouri Pacific system or the Mexican Central or the Rock Island. While I did not attach much importance to this condition, because I knew we would never, if we could help it, send business that way, when we contemplated having the best line between the Pacific coast and Galveston, all over our own rails, yet I was not willing to assent to that condition; and therefore, at the annual meeting I did not vote the proxies, but brought them back and handed them to Mr. Harriman. Soon after that he yielded the points in difference, and the terms which I had demanded from the very beginning of the negotiations were agreed to without any modification to the disadvantage of the Atchison system; and thereupon two of the directors of the Atchison company retired, and Mr. Rogers and Mr. H. C. Frick were elected directors, and one of them a member of the Executive Committee.

Annual meeting of 1904.

Trackage rights on low grade line.

Terms agreed to.

"MR. SEVERANCE. Which one? WITNESS. Mr. Rogers. As further explanation, I wish to state that in discussing the question of representation on the Board of Directors, Mr. Harriman and I were quite open with each other. I realized and he realized that the gentlemen whom I have named could, if they had desired, have elected four directors of the Atchison Company—four out of fifteen—because our board is a classified board, (1138) and under the system of cumulative voting one-fourth of the stock represented at a meeting can always elect one director; so that in four years the holders of one-fourth of the amount of stock represented at the meetings could put in four directors. With 300,000 shares to start with, and the proxies which they might obtain, it was evident that they could have elected one director a year—and then kept four directors in office. But I

Minority allowed voice in directory.

pointed out that no good could be obtained, either to the individuals or to the property, by a Board of Directors divided against itself, and that the only sensible course was to act amicably and give fair representation to these large interests, which I suggested should be two." These contracts respecting Northern California matters and the Phoenix & Eastern matter were not formally authorized by the board until December, 1906, but their terms had been substantially settled before Messrs. Rogers and Frick were elected members of the Board of Directors. The actual drafting of the various agreements was a matter between the lawyers altogether.

Agreements as to Northern California and P. & E. matters.

There were seven members on the Executive Committee. "The line between Wickenburg and the Colorado River was started, and part of it built, irrespective of the construction of a low-grade line to Deming. Originally, at the urgent insistence of Mr. Murphy, we consented to the construction of 50 miles of road, easy construction, west of Wickenburg. There were several purposes in view in building that line. One was to obtain the mining traffic which, it was represented to us, would come to us through the construction of that line. Another was that we were anxious to help on the construction of the dam of the Colorado River south of the Needles, and the reclamation of a very large body of land which is contemplated. A further reason was that ultimately this line would give us the best line from the west into the Salt River Valley, and would become an important, valuable link in any trans-continental line which might be established through Phoenix. There was talk at that time of other systems building in from El Paso, and we were desirous of occupying that territory so as to meet any line which might be constructed to Phoenix, and receive the traffic from that line at Phoenix, if possible. No doubt, also, it was considered that if ever we or the Southern Pacific should build its low-grade line between Phoenix and Deming, our line from Phoenix west to Mojave would be a link in the whole trans-continental line established in that way."

Line between Wickenburg and Colorado River.

(1139) Mr. Murphy had nothing to do with the negotiations, and witness didn't think that he ever considered the conditions and needs of the Atchison system as a whole. He was an enthusiastic son of Arizona, and had very high ideas of its possibilities, and was always anxious to spend the Atchison's money in the construction of Arizona lines. Messrs. Frick and Rogers exerted no influence in the Board of Directors, or otherwise, with regard to the Atchison-S. P. contracts. The terms of the contracts were settled before they became Directors. (1140) Witness always found Mr. Frick and Mr. Rogers to be as zealous Atchison directors as any of the Board. "I do not recall that at any time any question was raised as to the interests or desires of the Union Pacific or of the Southern Pacific Company." Mr. Harriman never exerted or undertook to exert, any influence upon witness, or upon the Board of the Atchison, adverse to the Atchison and in favor of the Southern Pacific or Union Pacific interests, and he never was consulted. The owner-

Messrs. Frick and Rogers, zealous Atchison directors.

Mr. Harriman never attempted to exert influence in favor of S. P. and U. P.

ship of $10,000,000.00 of Atchison stock by the Union Pacific has never had the slightest influence in the matter of causing the Union Pacific to control in any way the action of the Atchison.

(1141) There has never been any relaxation in the competition between the Atchison and the U. P. and S. P. Mr. Murphy never to any extent directed or controlled the policy of the Atchison Company. He confined his attention to the Prescott road and the conditions in Arizona. He was never a Director in the Atchison. The construction of the Wickenburg line was commenced, witness thought, in 1903; thought that the construction of the Phoenix & Eastern was begun in 1902. (1142) When the construction of the P. & E. was begun, the idea was to build to Benson. The idea of a line up to Gila Canyon was first brought up at the time of the controversy with the S. P. on account of the Atchison building into what they called their territory. At no time until the sale of the P. & E. was any definite line decided on as the proposed low grade line, if any should be constructed. Atchison's engineers were at work both in the north and south to ascertain what line would be most desirable, and the line which was under consideration at the close of the negotiations was a line through the Arivapa Canyon, which is south of the Gila Canyon. Think they first discussed building a line from Dudleyville to Deming in the winter of 1902-3. It was witness' impression that the Wickenburg line was started about six months afterwards. If witness previously testified differently, it was unintentional.

No relaxation in competition.

Arivapa Canyon.

(1144) Probably informed the right of way was given to the P. & E. in order to get a competing line. Contest as to location of the P. & E. with Harriman took place after witness had formulated his demands, and Mr. Harriman had refused to agree to them. Witness remembered stating to Mr. Harriman that he didn't think such action would facilitate the negotiation. The El Paso and Southwestern is an independent line of the Phelps Dodge people, connecting at El Paso with the Mexican Central and the Texas & Pacific. It has no way of reaching the Pacific coast, except by the S. P. from Benson. It connects with the Atchison at El Paso and at Deming, and through the S. P. it connects with the Atchison at Phoenix, but practically its only outlet is the S. P. The only thing that was left in order to give an outlet and an interchange of business between Arizona and the territory to the west, and along the El Paso & Southwestern and down into Mexico (1145) was the construction of this short line from Benson to Dudleyville, that is, as long as the Atchison owned that road. All the witness remembered was that Mr. Harriman objected to the Atchison constructing this line south of Phoenix, on the ground that this was an invasion of their territory. The territory lying between Benson on the south, and you might say Mesa on the north, except for that little line over by Maricopa, was not served at that time by the S. P., although Mr. Harriman was trying to protect it. The mineral traffic there, however, was traffic between local points and the east, which could not

El Paso & S. W.

Mr. Harriman's objections.

Traffic was local.

be properly served by the Atchison, but which naturally fell into the S. P. system, or to the El Paso & Southwestern. So far as the Atchison was concerned, it was simply a question of a short local haul to deliver to another line to the east, if the Atchison had built on to Benson. There was no business from those points. There were prospects of development, but you cannot operate a copper mine without a railroad, and there was no railroad reaching the mines in the San Pedro Valley. Doesn't think there is a mine there to-day, and if Mr. Murphy testified to the contrary, witness thinks he is mistaken.

(1146) S. P. didn't need the P. & E. line for local purposes any more than the Atchison. Does not doubt that the S. P. bought the line for the reason that was assigned, namely, that they didn't want the Atchison to extend into their territory. That is not another way of stating that they didn't desire competition from any other line in that territory. They didn't want the territory to be occupied by the Atchison, because if there was anything in the territory for a railroad company, they wanted it for themselves.

(1147) If the Atchison had been extended down to Benson, it would have produced competitive conditions, certainly between the country to the east and Phoenix. Mr. Harriman desired to prevent possible future competition through a line that the Atchison might build down to Benson. The Atchison didn't accommodate him in that regard. Witness would have sold that line independently, for cost and interest, because according to his best advices it would not pay for years to come, if at all, and if the Atchison wanted to build a line through there to Deming, they could build it, without having lost in the meantime interest on the investment. There was no thought of selling it until the controversy with the S. P. Co. (1148) Witness still thinks very well of the line from Ash Fork to Phoenix, built by Mr. Murphy. The latter knows the possibilities of the territory much better than anybody in New York that witness knows. Mr. Murphy was very much interested in the Atchison project in Northern California. He occasionally laps over outside of Arizona.

Would have sold P. & E. independently for cost and interest.

(1149) The Atchison has not requested the completion of the construction by the S. P. of the line from Phoenix to Deming under Exhibit 104. Nor does witness think the Atchison will ever ask trackage under that agreement, because he doesn't think it would pay. Thinks it desirable option to have, but doesn't believe it would ever pay the Atchison to haul its trans-continental traffic that way. The Atchison turned over to the S. P. the P. & E., reserving a right which witness regards as of some value. The principal difference in negotiations with Mr. Harriman was that the latter refused to give the Atchison a half interest in the lines north of San Francisco Bay.

Would not pay Atchison to haul its transcontinental traffic via Deming.

(1150) Mr. Harriman considered the trackage contract of more value than witness did. Witness went into the construction of the P. & E. to Dudleyville reluctantly, and was willing to sell at cost and interest, because he didn't believe it would pay. Hasn't yet

Was reluctant about construction of P. & E.

paid operating expenses. Line was built to develop local traffic, and not as a tunnel between two points. Witness not a traffic man, but Mr. Ripley advised that he didn't think the construction on to Benson would have opened up enough traffic to pay for the construction. Mr. Ripley stated to witness that it would be many years, if ever, before the Atchison could afford to build that low grade line. It wouldn't pay. It would have involved an expenditure of more than $15,000,000.

(1151) Atchison has built as far as the Colorado River, including an expensive bridge. Thinks about 96 miles up to Bengal, and it would cost about $2,000,000 to build there. Some day the line will undoubtedly be extended. A line will be built from somewhere about Parker, in a northeasterly direction to Ash Fork, to give the Atchison a second line between that point and Bengal. That will leave only the short piece of line between Ash Fork and Winslow, in order to give practically two lines across.

Parker to Bengal.

(1152-1153) Even if there had not been a panic a year ago last fall, doesn't think the line through to Bengal would have been speedily constructed. The Atchison originally contemplated the purchase of the California & Northwestern, but the S. P. got ahead of it. Atchison wanted a foothold in that country. Some of the mills are inland and some on tidewater. The Atchison has no line of boats there. S. P. is entitled to trackage rights between Phoenix and Mojave, and Atchison is anxious for them to take it, because if they will, the line will be immediately finished. The S. P., if they then took their through business over the line by Wickenburg, would get a much better grade for San Francisco and Northern California (1153) but not for Los Angeles; so that it is a valuable privilege for the S. P. On the other hand, it would relieve the Atchison of half the cost of construction and maintenance. The S. P., of course, are not going to claim the trackage privilege, unless they find it more profitable to pay all that than to use their own line. S. P. didn't ask for it, but witness offered it.

Santa Fe wanted entrance to Northern California.

(1155) Witness didn't think it would now pay to build the line which has been under consideration from some point east of Parker to a point between Prescott and Ash Fork. The increase of the interest charges and of maintenance would far exceed any saving in operation. (1157) Mr. Harriman invited Morawetz into the U. P. Board, because it was a part of his expressed policy that two great railways should deal with each other openly and frankly. Albuquerque is a few miles nearer Chicago than Belen, but the Belen cut-off makes the road to the coast 11 miles shorter. The difference arises because of the cut-off from Belen to the main line west of Albuquerque.

(1158) In Northern Arizona the Atchison has trouble getting water for its engines. Along the southern line down the Gila Canyon they would not have that trouble. The expense is considerable, but is trifling compared to an interest charge of $750,000

per annum and a maintenance charge of an equal amount for the new line. West of the place that the Belen cut-off strikes the main line at present there is some heavy mountain climbing—between Rio Puerco and Winslow, but by expending $1,700,000, a six-tenths of one per cent. grade could be established, leaving stiff grades to be dealt with only between Winslow and the Colorado River. (1159) Witness describes grades. The 369 miles containing heavy grades between Winslow and Bengal would be substantially eliminated if you made this detour around by Deming, but it would add 160 miles. The main line between Wickenburg and the Colorado River has a grade of 1.25, only a short distance.

Grades on Santa Fe.

(1160) At places, the line between Wickenburg and Phoenix is one per cent. or more. (1161) If it had been deemed urgently in the interest of the Atchison Company to build that line down to Benson, it would have been built, but the management didn't think that the advantages of building that line were sufficient to counterbalance the disadvantages. The disadvantages were twofold; one, that the profits of the line were, to say the least, problematical, (1162) and witness didn't think it was good policy to invade the territory of another company, unless it was very profitable to do so. It is barely possible that the time may come when, for the purpose of hauling the business of the Missouri Pacific and Rock Island from El Paso, it may pay the Atchison to exercise its option and take advantage of the trackage contract. Considers it would be ruinous for the Atchison to build that line, at least for many years to come. If, in the future, the growth of business should be so large as to make it profitable, why, the Atchison would build it. There is nothing to prevent it. It could duplicate the line from Phoenix to Dudleyville at far less than it received for that line from the S. P.

Santa Fe may avail itself of trackage contract.

Witness thought it better for the Atchison to build the P. & E., than that it should be an independent line in that territory, and furthermore, there was a certain strategic value possible to that line at a time when other lines coming in from the east were talking about building to California. (1163) Furthermore, he had the glowing accounts of Mr. Murphy as to the mineral possibilities of the territory. The Atchison's attitude indicated that originally they didn't want to build it. One reason why the S. P. wanted to buy the P. & E. was that it had had a project for some time to build a line down the Gila Valley to a connection with its Maricopa line south of Phoenix, without going to Phoenix, and this would have been part of that line, but witness thought the main reason was a desire to keep the Atchison out of that territory. Understood that the S. P. had a project under consideration of building down the Gila Canyon, reaching its line in the vicinity of Lordsburg on the east, and the extension westerly from Phoenix to Yuma, thus shortening its main line. There were rumors that the Missouri Pacific and Rock Island might come in from the east. (1166-1167) Exhibit 110. List of members of the Executive Committee of Atchi-

Strategic value of P. & E.

son from January 6, 1904, to and including election of November 4, 1908.

(1167) JAMES DOUGLAS

Douglas.

Resides at Spuyten Duyvil. President of the El Paso & Southwestern and of the Copper Queen Mine, located at Bisbee. (1168) Bisbee is a mining town of 15,000 people. Douglas is in the Sulphur Spring Valley, 28 miles from Bisbee, and the chief industry there is the smelting of ores that are raised in Bisbee. Of the other companies, the Calumet & Arizona is the largest, and the Superior & Pittsburg next. The output of the Copper Queen is 6,000,000 pounds of metallic copper a month, and that of the C. & A. and S. & P. at present is in the neighborhood of 4,000,000 and 5,000,000 pounds a month. The El Paso and Southwestern connects Bisbee with Douglas. That road, with its branches, is 290 miles in length. It was built by the people who are interested in the Copper Queen, and extends from El Paso into Benson, with a branch up to Bisbee. Except the mines at Bisbee and the smelters at Douglas, very little freight comes to the road except from Clifton, which is a mining region about 120 miles from a place called Hachita, where the El Paso and Southwestern joins the A. & N. M.

President El Paso & S. W.

Its industries and connections.

(1169) The traffic is chiefly mineral, but, of course, a population of about 30,000 people is fed by the El Paso & Southwestern. Moreover, at Douglas the road joins with the Nacozari Railway, running down into Mexico for 70 odd miles, and that yields it a considerable traffic. At El Paso it connects with the S. P., the Mexican Central, the Atchison, the Rock Island and the T. & P., and exchanges traffic with all those lines. Witness is quite familiar with the San Pedro Valley from Benson to Dudleyville. The San Pedro is the only perennial stream between the Rio Grande and the Colorado River. Runs almost the whole way between Benson and Dudleyville. It is a narrow valley, and swept by floods from the mountain ranges on each side. 80 miles from Benson one gets into a highly mineralized country, where the mines have never been developed actively, partially for want of cheap transportation. They are low grade mines, which could be made to pay only under very favorable conditions. By highly mineralized, witness means there is a large territory over which mineral is found, but it does not follow that the mineral is worth anything. Once had charge of a mine close to San Carlos Canyon, 70 miles from the railroad, but it didn't pay.

San Pedro Valley.

(1170) Unless the price of copper is very high, a 70 mile wagon haul is prohibitive. Had negotiations with Murphy, with reference to exchange of traffic or trackage lease. Thought at the time the Phoenix & Eastern was an independent line. (1171-1173) Exhibit 111-A, letter dated August 10, 1901, addressed to Mr. Hutchinson, care of Phelps, Dodge & Co., by F. M. Murphy, initiating the correspondence, and enclosing memorandum of proposed contract. (1174-1176) Exhibit 111-B, is Mr. Hutchinson's reply, dated August 12, 1901. (1177) Exhibit 111-C, letter dated October 23,

Negotiations with Mr. Murphy.

1901, from Douglas to Murphy. Exhibit 111-D, telegram dated November 3, 1901, from Murphy to Douglas. (1178) Exhibit 111-E, letter Murphy to Hutchinson, dated November 9, 1901. (1179) Exhibit 111-F, letter dated November 11, 1901, Hutchinson to Phelps, Dodge & Co. (1180) Exhibit 111-G, letter dated November 14, 1901, Hutchinson to Douglas. (1181) Exhibit 111-H, letter dated March 10, 1902, from Murphy to the El Paso & Southwestern. (1182-1184) Exhibit 111-I, letter dated May 10, 1902, Douglas to Phelps, Dodge & Co., with enclosure. (1184-1187) Exhibit 111-J, Proposed Traffic Agreement drawn up by Mr. Osborn, witness' attorney.

Correspondence with Mr. Murphy.

The following were read into the record: (1187) Letter dated March 18, 1902, from Douglas to Murphy, in reply to Exhibit 111-H. (1188) Letter dated April 8, 1902, from Douglas to Murphy. Letter dated June 23, 1902, from Douglas to Murphy.

(1189) Exhibit 111-K, letter dated June 24, 1902, from Murphy to Douglas. (1190-1191) Exhibit 111-L, letter dated July 14, 1902, Douglas to Murphy. (1192) Exhibit 111-M, letter dated July 19, 1902, from Murphy to Douglas. (1193) Two letters from Douglas to Murphy, both dated July 24, 1902, were read into the record. (1194) Exhibit 111-N, letter dated July 25, 1902, Murphy to Douglas. (1194-1195) Exhibit 111-O, letter dated July 28, 1902, from Murphy to Douglas.

(1195) There was no correspondence later than the correspondence offered in evidence. The most direct outlet for El Paso & Southwestern to California is the S. P. from Benson. The next most direct is the Atchison from Deming. Over the latter route traffic goes up north almost to Albuquerque. It is a long way around, so that most traffic goes over the S. P. Negotiations with Murphy never proceeded beyond the points shown by correspondence. Contract was never consummated. The line promoted by Murphy ran up the San Pedro Valley from Dudleyville to Benson. The river flows north.

Contract never consummated.

(1196) There is a good deal of agriculture in the upper reaches of the valley, but very little twenty miles from Benson. Most is within twenty miles of Benson. The distance over a practical route for a railroad from Benson to Dudleyville would be between 80 and 90 miles. El Paso & Southwestern never deemed it to its interest to construct that line. Witness has considered it, but doesn't know whether it would be profitable, and never seriously thought of building it. Rather have somebody else build it and get the traffic. The line would be a feeder for the El Paso & Southwestern. Witness thought south of Benson there were places where it would be desirable to have the exclusive right of way, especially in the lower reaches of the valley. (1197) Line would not be expensive there, nor would terminals at Benson. Benson has been a stagnant place from the beginning. Doesn't think its population ever exceeded 1,000 people. The S. P. has so much ground at Benson that if any

Never deemed it wise to construct line Benson to Dudleyville.

other railroad wanted to get in and make a connection with the El Paso & Southwestern, it might have trouble. There is substantially only one point where they could very well connect there.

E. P. & S. W. uses S. P. tracks at Benson.

(1198) El Paso & Southwestern uses the S. P. yards at Benson. Has substantially no terminals there at all, because the S. P. owns pretty nearly everything there. The Santa Fe used to come in and their yards were three-quarters of a mile, or nearly a mile, out of Benson. All that territory, too, the S. P. now owns. There is plenty of space north of the S. P. tracks, but to get across those tracks and make connections with the El Paso & Southwestern, and get your yards south of the S. P. tracks, would be a difficult thing. El Paso & Southwestern runs out of Benson to the south. (1199) Building another line to connect with the El Paso & Southwestern at Benson further discussed.

Benson and its environments.

The nearest town to Benson is St. David's, a small Mormon town of 500 or 600 inhabitants. It is on the other side of the river half a mile away. The next is (1200) Fairbank, 18 miles from Benson, with a population of 400 or 500. There is a very scant population in the territory between Benson and Fairbank. The level valley at Benson is about half or three-quarters of a mile wide. Taking in a slope of 100 feet or more, it is a mile or two wide. It would not be impossible, but would be difficult for Murphy's road to get across or under or over the S. P., and make a connection with the El Paso & S. W. at Benson. That is not the reason the El Paso & S. W. never extended north of Benson. Had no particular motive for such an extension. Object in that road was to carry coal and coke to the large smelting interests at Benson.

Mines and smelters.

(1201) Phelps Dodge people interested in mines before becoming interested in the railroad. Have no interest in the C. & A. Have friendly relations, but not interested in the Superior & Pittsburg mine. Are interested in smelters at Douglas. Phelps Dodge interests control the Mexican Railroad to Nacozari. There are some mines between Dudleyville and Benson, naming them. (1202) The Arizona and New Mexico runs from the Junction of the El Paso & S. W. at Hachita, through Lordsburg, up to Clifton, and is owned by a Scotch company that owns some of the most important mines at the latter place. Before the El Paso & S. W. was built into Benson, or even to Fairbank, the Sonora road was built by the Santa Fe, who parted with the line five or six years ago.

Lease of road to Guaymas.

(1203) The existing lease from the Atchison to the S. P., of the New Mexico & Arizona Railroad, running from Benson to Nogales, and thence on to Guaymas, including the Sonora Railroad, was made in 1898. The same instrument covers also the lease of the Southern Pacific's line from Needles to Mojave. S. P. got their maps filed ahead of the El Paso & S. W. in going into El Paso, so that the latter had to open up another gateway into El Paso. The S. P. had a line out of El Paso at the time, but wanted to better their location. (1204) The Copper Queen is the second largest smelter in the country. The Washoe is larger.

Large smelters.

The C. & A. has a smelter at Douglas. Witness thought El Paso had a population of 100,000. El Paso & S. W. got into El Paso, thanks to the decision of the Railroad Commission. Could probably have gotten in, anyhow. The S. P. wanted the former not to cross its tracks at grade, but were unsuccessful.

Rail crossings objectionable.

(1205) Doesn't think the S. P. could prevent the building of a line from Dudleyville to connect with the El Paso & S. W. at Benson, but they could interfere. It is generally the case that one railroad tries to prevent another from crossing its track. The S. P. doesn't act very differently from what the El Paso & S. W. does. Would not want another road to cross its tracks, even though they were not rivals.

Kahn.

(1205) OTTO H. KAHN.

Testimony given before Interstate Commerce Commission in New York on February 27th, 1907.

Member of firm of Kuhn, Loeb & Co.

Lives in Morristown, New Jersey. Is a member of the banking firm of Kuhn, Loeb & Co. Has been about ten years. (1206) The copartners constituting the firm are Jacob H. Schiff, Felix M. Warburg, Paul M. Warburg, Mortimer Schiff, Louis A. Heinsheimer and witness. The firm has been composed of these particular gentlemen for about three years. At the time of the reorganization of the Union Pacific, the firm consisted of Jacob H. Schiff, Abraham Wolf, Felix M. Warburg, Louis A. Heinsheimer, and witness. At the time of the reorganization and prior thereto, the firm of Kuhn, Loeb & Co. were quite largely interested in the Union Pacific. Jacob H. Schiff was a member of the Union Pacific Reorganization Committee. Kuhn, Loeb and Company were bankers to the Committee. Witness was a member of the Executive Committee of the Union Pacific Railroad Company and Mr. Schiff was on the Board, and as far as the details were concerned, witness would be more conversant with them than Mr. Schiff would. This statement refers chiefly to the management of the Union Pacific subsequent to the reorganization.

Largely interested in Union Pacific.

Member Ex. Com. U. P.

Scaling of securities at time of reorganization of U. P.

(1207) In the reorganization of the Union Pacific there was a scaling down of securities of the old company, which it succeeded, and also an enlargement of the securities put out. There was given for the old 6 per cent. bonds, new 4 per cent. bonds and an appropriate proportion of stocks. There was also given for the assessment, which was furnished in cash, preferred stock and new common stock. At the time witness' firm took hold of the Union Pacific it was in the hands of receivers, and had been operated by receivers for several years. The interest on all the old bonds had not been paid during the receivership. There were a number of branch lines of the Union Pacific, which did not participate in the reorganization. Witness believes that the St. Joe and Grand Island was one of them, but is not certain.

(1208) At the time of the reorganization there was issued for the 6 per cent. bonds, new bonds, dollar for dollar, bearing 4 per

cent. interest, and running for a long period of time, and also an amount equal to 50 per cent. of the face of the bonds in preferred stock of the corporation. Reading from the reorganization plan, witness states that for the actual purpose of reorganization there were issued out of a total of $100,000,000.00 of bonds, $51,000,000.00. There was reserved to dispose of equipment obligations and reorganization and corporate uses, $13,000,000.00; the balance was reserved for settlement of the debt to the United States and for extraordinary requirements—in round figures $36,000,000.00. "Q. Those bonds were used, were they not, or the proceeds of them, to settle the debt to the United States? A. I believe not. I believe that quite a considerable amount was turned over to the new company, and was later on sold for its corporate purposes. Q. But you paid the Government in excess of the amount of those bonds, didn't you? A. We did. Q. Well, you finally got out $100,000,000.00 of the bonds of the new company, didn't you? A. But not all at the reorganization. Q. No, but can you tell me how many were not used for the purpose of reorganization, and to pay the Government debt? A. This plan does not show, but I remember that a considerable amount was turned over to the new company, and was sold later on by the new company, for its corporate purposes, equipment, improvement and so on."

Reorganization plan—issue of securities.

The amount may have been $5,000,000.00, or it may have been $10,000,000.00. The new company issued a total of $75,000,000.00 of preferred stock. (1209) There was paid the Government in settlement of its debt a sum in excess of $50,000,000.00. $61,000,000.00 of common stock was also issued. According to the plan of reorganization the common stock was issued in exchange for common stock of the Union Pacific Railway Company, on which assessments of $15 a share were paid under the plan. The subscribers got for the $15 a share the amount of the assessment in new preferred stock at par, and also received par of common stock in common stock of the new company. "Q. So that in a nutshell, the plan of reorganization contemplated the issuance of $100,000,000 of bonds, $75,000,000 of preferred stock, a portion of which was used to pay the common stockholders of the old corporation for their assessment of $15.00 a share, and $61,000,000 of common stock which was exchanged dollar for dollar for the common stock of the bankrupt road? A. That is right."

Payment of Gov't debt.

Distribution of stock and bonds.

The old company had a total funded debt of $140,425,682. The capital stock was $60,868,500—a total of $201,294,882. "Q. As against a total issue of securities by the new company of $236,000,000—an increase of $34,705,818. (1210) A. The comparison is not quite correct, because part of the new capitalization was used later on for additional equipment and other improvements, it was not all used to take up the $201,000,000 of old capitalization." Witness thought bonds and preferred stock together, probably somewheres in the neighborhood of $20,000,000, were not so used, but

Capital account of old and new company.

was not positive. Every share of the common stock of the present Union Pacific, so far as it was issued at the time of the reorganization (viz, $61,000,000), was issued in exchange for common stock of the old road. The preferred stock of the Union Pacific which was then issued, was not issued as a bonus upon the exchange of the bonds of the old corporation for the bonds of the new corporation. "It was issued as a fair trade, refunding a six per cent. bond for a four per cent. bond and for fifty per cent. of preferred stock; in other words, getting an old six per cent. bond—interest at the rate of four per cent. on the new bond, and at the rate of two per cent. on the new preferred stock."

Preferred stock was not issued as a bonus.

(1211) The particular scheme of reorganization which was adopted was the best that at that time it was possible to carry through, and was a fair and reasonable one. The terms were the best possible ones which could be made with the stockholders and the old bondholders. Mr. Schiff and witness continued on the Board until about a year ago. (1212) Witness states that in no case in dealing with the Union Pacific did the profits of Kuhn, Loeb & Co. "exceed a fair and usual banking compensation or commission, and in more than one instance, did we render services to the Union Pacific without any compensation whatever; and about a year ago we reached the conclusion that the Union Pacific—that, firstly, because of great claims upon our own kind, which our own business made upon our time, we were not in a position to give the necessary time and attention to the affairs of the Union Pacific, and being bankers and not railroad men, and the Union Pacific credit and standing being established beyond peradventure, we thought that we would retire from the Board of the Union Pacific, and we did so retire."

Profits of Kuhn, Loeb & Co. never exceeded a fair commission.

Mr. Schiff was a Director of the Great Northern for a time, and witness believes he was also a Director of the Northern Pacific at one time. He is not sure about the latter. Does not remember the exact date, but thinks he was a Director of the Great Northern until 1901. "He had been in the Board of the Great Northern a great many years. I don't know for what reason he went in and I don't know for what reason he left."

(1214) From the time of the reorganization of the Union Pacific down to the present time, witness' bank has been fiscal agent of the Union Pacific and still is. "Q. That is, when they want to sell securities, they sell them through you, and when they want to buy securities, they buy them through you, as a rule? A. Provided that we offer as good or better terms than anybody else." (1215) A very large percentage of the securities purchased by the Union Pacific and a very large percentage of securities sold by the Union Pacific have passed through the hands of Kuhn, Loeb & Co. It is the practice in the case of all large railroad companies to deal with one particular banker.

Fiscal Agent of U. P.

Banking custom.

The negotiations for the acquisition of the Southern Pacific stock were conducted by Kuhn, Loeb & Co. as fiscal agents for the com-

pany and Mr. Harriman. The negotiations were had with Mr. A. G. Huntington and Speyer & Co. They represented a large block of Southern Pacific stock, which controlled the property. "Q. At whose instance did you undertake those negotiations? A. Largely at our own instance and of course in conference with Mr. Harriman. Q. Well, you did not undertake the purchase of those securities as an investment for your house, but you undertook the purchase (1216) with the intention of turning them over to the Union Pacific, didn't you, after conversation with Mr. Harriman? A. If the Union Pacific wanted them, after mature deliberation by its Board. If they did not want them, we would have been perfectly willing to keep and sell them to somebody else, and it would have been very easy to sell them to somebody else. * * *

Purchase of S. P. stock.

(1217) "The understanding with him (Mr. Harriman) was, that so far as he was concerned, we were bound to offer that stock to the Union Pacific at cost, plus a reasonable commission for our services in the matter, which we did. Q. You wrote a communication to the Board, didn't you? A. Yes. Q. In which you said, 'We have purchased 432,700 shares of the Southern Pacific Company of Kentucky, to be paid for as follows: 144,233 shares on February 11th; 268,467 shares on, or at our option, before July 10th, with interest at 4 per cent. per annum from February 11th, all said shares to be deposited with a Trust Company until entire payment is completed. We have further purchased the following shares: 200,000 shares to be paid for on, or at our option before March 4th. 45,000 shares to be paid for, one-half on February 5th, and one-half on February 8th. The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share.' That is an accurate statement, isn't it? A. Certainly. Q. That is stock you bought from Speyer & Company, and had arranged to buy from Speyer & Company and Mr. Huntington? A. Yes.

Offer to sell S. P. stock to U. P.

"Q. And then you further add: 'In order that your holdings of Southern Pacific stock may aggregate 750,000 shares, we agree to sell to you on March 4, 1901, 72,300 additional shares at the same price, viz: $50.6146 per share, plus interest at the rate of 4 per cent. from February 11, 190—.' From whom did you buy that stock? A. From whom did we buy that stock? We undertook to deliver that stock; we bought it in the market." When witness addressed this communication to the Board he had not then bought that stock. The ruling prices of Southern Pacific stock at that time witness thought was about 49—between 48 and 49.

Offer to sell additional shares.

(1218) "Q. Upon that purchase price, you say you were 'also to be paid by the company $2.50 a share upon said 750,000 shares, of profit to us for the risk assumed in making these purchases?' A. That is right. Q. The risk you assumed was the risk that the Union Pacific Board would not approve of Mr. Harriman's provision relative to the acquirement of this stock, was it? A. No; that was only one of the risks. There was an additional risk. Q.

Risk assumed.

What was it? A. The other risk, to which our attention was called by our counsel, was a legal risk. At that time it was not certain whether the Union Pacific or the Oregon Short Line could legally acquire the Southern Pacific stock. Q. Why? A. Because the Southern Pacific Company was a holding company and not a railroad company, and that defect, if it existed, was later on cured by appropriate legislation, I believe. But that time, that risk existed and was forcibly called to our attention by our counsel, and we were told that we were incurring a very substantial risk in standing in the breach."

S. P. stock was purchased to prevent the U. P. from being shut off at Ogden.

While witness was not an expert on railroad matters, he understood in a general way that the main purpose of the Union Pacific in acquiring the Southern Pacific was to be certain of not being shut off at Ogden from reaching San Francisco. At that time it had become quite apparent that the Southern Pacific would not remain an independent line, and that one or the other of the large systems would buy it, would get control of it. "Reports had come to all of us of negotiations which were being carried (1219) on by other large systems to acquire the Southern Pacific. It was, as I understood it, of vital importance to the Union Pacific not to be shut off at Ogden, and to continue to be able to use the line from Ogden to San Francisco. Naturally I also understood that the north and south lines in California were valuable feeders. I always understood also—as I say, I am not competent to pass on these questions very well. * * *

S. P. never considered a competing line.

"I always understood that the Southern Pacific was bought by the Union Pacific for advantages which it afforded as a connecting line, and it never entered our minds at that time that it could be in any sense considered a competing line. Q. That never entered your head? A. That never entered our heads at the time. Q. You did not think of such a thing as that? A. Never. Q. You did not know that traffic moved to California both ways, both over the Union Pacific and over the Southern Pacific, Sunset Route? A. I was not generally posted on these questions. I only know we bought the Southern Pacific because it was represented to us that it was a necessary supplement to the Union Pacific, and if we did not buy it the Union Pacific would be bottled up at Ogden. Q. The Union Pacific owned the line to Portland. A. The Union Pacific owned the line to Portland, to Northern California, yes.

S. P. was a necessary supplement to U. P.

"Q. So that they could not shut you off from access to the Pacific Ocean? A. But they could have shut us off from access to San Francisco by the Southern Pacific, which we had always used theretofore, I believe. Q. And so, for the sake of getting a line 800 miles long, which you regarded as essential to the Union Pacific, you bought six or seven thousand miles. Is that the idea? A. No; I said the lines in California were doubtless an additional inducement. Q. Was not the Southern Pacific any inducement, the Sunset Route? A. I don't believe it was. I understood at that

The California lines an additional inducement. The Sunset line was not.

time that it was a nuisance. It certainly was not an inducement at that time."

Witness said that "the necessity of acquiring with the Southern Pacific the line which you call the Sunset route was the very opposite to an inducement. The Union Pacific did not buy the Southern Pacific because the Southern Pacific contained that southern line, but it bought it in spite of that. * * * I think if at that time the southern line could have been cut off from the Southern Pacific, it would have been preferable to all of us." Witness thought under the present management that the southern line had been much improved and made valuable.

S. P. was not bought because of its southern line but in spite of it.

The question whether it would be a good thing for the Union Pacific to lop off the Sunset Route never came up, because it was not a practical question. "I want to bring out again that in my mind, and from what I then heard from those more competent to judge than I, the Southern Pacific was acquired because of its connecting features, and not because of that Sunset Route, which at that time was, I believe, not a profitable part of the system."

S. P. acquired because of its connecting features and not because of the Sunset Route.

(1221) The Union Pacific paid Kuhn, Loeb and Co. cash for the Southern Pacific stock. The cash was raised by the issue of convertible bonds, which were sold. At a meeting of the Board of Directors of the Union Pacific of February 20th, 1901, resolutions were adopted accepting the proposition of Kuhn, Loeb and Co., and providing for the issuance of $100,000,000.00 of convertible bonds. $40,000,000.00 of those bonds were offered to the holders of the common and preferred stock of the company for subscription at par. Witness believes that an amount in excess of $25,000,000.00 of these convertible bonds were taken by the stockholders.

Convertible bonds used to purchase S. P. stock.

(1222) In 1902 the Union Pacific bought some more of the Southern Pacific stock, ($15,000,000.00). It was bought from Kuhn, Loeb and Co. The price as shown on the record is 65. It was stock that Kuhn, Loeb & Co. held individually. (1223) "My recollection is that at that time efforts became apparent, which later on crystallized, to form a strong combination against the Union Pacific control of the Southern Pacific, and the Union Pacific directors felt that the holdings of the Union Pacific had better be increased to what Mr. Harriman called yesterday an unquestionable dominating interest. Negotiations were opened with us for the purpose (purchase) of our holdings of stock, and we sold them at the market price of the day."

Reason for purchase of additional S. P. stock.

The Union Pacific also acquired about $78,000,000.00 of Northern Pacific common and preferred stock. The idea of acquiring that stock started with the purchase by the Northern Pacific and Great Northern of the Burlington. That was in March, 1901. The advisability of acquiring Northern Pacific stock was discussed with Mr. Harriman in April.

Purchase by U. P. of N. P. stock.

(1224) "Mr. Harriman and we, in April, 1901, owing to the acquisition by the Northern Pacific and Great Northern of the Bur-

lington, became convinced that it was very desirable that a controlling interest, or at least an influential holding of Northern Pacific, should be concentrated in friendly hands, pending decision of the question. It was not a matter that could be decided in a day or a week, or four weeks, or six weeks, pending the decision of the question of the action, if any, the Union Pacific intended to take in the matter; and it was in pursuance of that idea, and in pursuance of the necessity which we saw for having such a concentrated holding, and knowing also at the same time that the Northern Pacific was a very excellent proposition and was selling at a very cheap price; knowing also, as we did, of certain plans which were on foot for increasing the value of Northern Pacific; being certain that the purchase of Northern Pacific at the then prevailing prices was an advantageous purchase under any circumstances; being perfectly willing to hold the stock for ourselves if the Union Pacific did not want it; in fact, preferring to hold the stock for ourselves if the Union Pacific did not want it, but at the same time feeling morally bound to give the Union Pacific opportunity to buy it from us if they wanted it;—taking all those things into consideration, we started buying Northern Pacific stock.

Reasons for purchase of N. P. stock.

(1225) "In a general way it is quite apparent that it was of great importance and great weight to the Union Pacific to acquire a holding in Northern Pacific, so as to enable it to get its connection into Idaho, Washington and those other states and territories that Mr. Harriman yesterday referred to. I am not prepared to go into detail in explaining its advantages. I would rather have a railroad expert explain that. I considered at the time that the acquisition of the Burlington by the Northern Pacific and the Great Northern, tended, as I understood it, to shut out the Union Pacific from those territories in the Northwest, and we considered that if it were possible for the Union Pacific to have a substantial holding and possibly a controlling holding, in Northern Pacific, the Northern Pacific in its turn having half of the control of the Burlington, it would be a very beneficial thing for the Union Pacific. At the same time we were convinced that the stock was selling far below its real value, and the result has shown that our judgment was correct."

Why N. P. stock should be purchased.

(1226) Mr. Harriman, on the same day, answered witness' letter, and said, among other things: "I beg to acknowledge receipt of your letter of to-day, offering to sell to this Company 100,000 shares of the preferred stock and 150,000 shares of the common stock of the Northern Pacific Railway Company, at 101 per cent. per share of preferred and 102½ per cent. per share of common stock, the latter *ex dividend*—for which books close to-morrow. I have authority from this company to purchase any such stock, and I believe with you that the acquisition of this stock will be of great benefit to this company."

(1227) Witness' attention was called to a letter of the next day, the 16th, in which he stated he was "prepared to make delivery

against payment for the same, which we calculate to be $25,475,000." The stock was turned over and the purchase money paid. Witness' attention was called to a letter of the 29th of April, 1901, written by Kuhn, Loeb & Co. to Mr. Harriman, in which the former offered to sell to the Union Pacific 160,000 shares of preferred, at 102.50 and 120,000 shares of common at 112 per share, that offer to remain open until the next morning.

Shares turned over and money paid.

Additional shares.

"Our method of proceeding was on our own risk and responsibility to go ahead and buy the stock as best we could, feeling certain, as we did, that it (1228) was a most advantageous purchase, in any event, and being perfectly prepared to keep it ourselves if the Union Pacific didn't want it, and preferring to keep it ourselves if the Union Pacific didn't want it, and at the same time feeling morally bound to offer it to the Union Pacific from time to time, as we had a substantial amount, at a very slight increase on the price we had paid, I don't believe in any instance exceeding 2½ per cent. upon the amount we had paid. We offered the stock to the Union Pacific at very much lower prices, taking it all through, than it sold for on the day on which our offers were made. * * *

Prepared to keep N. P. stock if not wanted by U. P.

"Q. But, Mr. Kahn, however strongly you felt that you were getting this stock for much less than its intrinsic value, it had not occurred to Kuhn, Loeb & Co. to get into the market and buy Northern Pacific stock until the time you thought the Union Pacific ought to have it, and after you had had this talk with Mr. Harriman whatever the talk was? A. Oh, no, the value of the Northern Pacific was very much increased by their obtaining control of the Burlington, and we went into the market the moment the Northern Pacific obtained control of the Burlington. Q. That was the latter part of March? A. That was the latter part of March.

Sold stock to U. P. below market price.

Value of N. P. increased by purchase of C. B. & Q.

(1229) Witness' attention was called to another letter of Mr. Harriman, written on that same day, the 29th of April, stating: "The Union Pacific desires to purchase additional shares to the amount of at least 250,000 shares. Mr. Harriman desires to know whether they can be procured from or through yourselves, and upon what terms." In answer to that letter Kuhn, Loeb & Co. offered Mr. Harriman all they had, which was, witness thought, about $16,000,000 of the stock. On the 30th of April, Mr. Harriman wrote Kuhn, Loeb & Co. offering to sell them $25,000,000 face value of the U. P. First Lien Convertible Four Per Cent. Gold Bonds.

Mr. Harriman wishes additional shares N. P. stock.

Offer of sale of U. P. convertible bonds.

No offer was made to the stockholders of the additional $25,000,000 of convertible bonds. There was an agreement in force at that time between the Union Pacific and Kuhn, Loeb & Co., by which they were to have the right to take the additional $60,000,000 at a discount of 5 per cent. "We consider that no more than fair. At the time we took a very great responsibility which you do not appreciate, but which existed and existed to a very great extent. At the time we became responsible for the issue

Right of Kuhn, Loeb & Co. to take balance of convertible bonds.

of the Union Pacific four per cent. convertible bonds, the Union Pacific credit was not yet such as to insure the sale of new bonds on a four per cent. basis at par, and by our efforts we placed those bonds and obtained the money for the company whether it came from the stockholders or from us makes no difference. If the stockholders subscribed it was because we guar- (1231) anteed the security to a certain extent, anyhow. I mean our pressure and our efforts had a great deal to do with the success of that issue, and if we undertook to become responsible for that issue we considered it ourselves perfectly justifiable and the railroad company considered it perfectly justifiable to stipulate that any further issue of those bonds should be offered to us at the same price." Kuhn, Loeb & Co. took the $25,000,000 of convertible bonds offered by Mr. Harriman in his letter of April 30th. The proceeds were used to pay Kuhn, Loeb and Co. for the Northern Pacific stock they were buying.

"Q. Then on the 7th of May Mr. Harriman addresses you another letter, stating that 'the Union Pacific desired to make additional purchases of the stock, common and preferred, of the Northern Pacific Railway Company to an amount up to but not exceeding $24,500,000 par value, in the aggregate of both stocks. On behalf of the Executive Committee and with its authority, I desire you to make purchases for account of the Union Pacific Railroad Company and shall be glad to hear promptly your views as to the prices at which the stock can be obtained so far as you can judge.' A. Yes. Q. Then you answered that letter, stating 'We ourselves own and control 80,000 shares of preferred and 86,000 shares of common (1232) stock of the Northern Pacific Railway Company, and we offer to sell these shares to the Union Pacific Railroad Company at the rate of $109.00 per share of preferred stock, ex-dividend for which books close May 10th, and $131.50 per share of common stock. We must ask you to advise us before four o'clock today, if practicable, whether the company will accept this offer, in order that we may govern ourselves accordingly.' Then you pointed out in a foot note, that the prevailing prices were several points in excess of the prices quoted by you. A. We quoted that the closing price for common stock was 143½ when we offered it at 131½ and the preferred closed at 110 when we offered it at 109. Q. And on the same day, Mr. Harriman, as chairman of the Executive Committee, answered your letter, in which you offered to sell the stock at that price, and he accepts the offer and then gives you additional authority to make additional purchases in the market for account of the Union Pacific Railroad Company of preferred stock in the aggregate a total cash expenditure of $9,200,000, using your discretion as to price and times of purchase, but not to exceed the average rate of $115.00 per share ex-dividend for which books close May 10th. Did you make any purchase under that authority? A. Yes; we purchased some preferred stock and turned it in at cost."

Additional sales of N. P. stock to U. P.

(1233) For a large part of the distance traversed by the Union Pacific, it was an active competitor, with the Burlington. On transcontinental business, the Northern Pacific was a competitor with the Union Pacific. (1234) Kuhn, Loeb & Co. bought that stock and turned it over to the Union Pacific for the purpose of enabling the Union Pacific to control the Northern Pacific and through it to have a half interest in controlling the Burlington. The Northern Pacific stock was sold to the Union Pacific or through the Union Pacific to the Oregon Short Line, the Union Pacific being simply the financial intermediary, because the Oregon Short Line did not have the cash or the means of raising the money, except through the Union Pacific. (1235) "I am not sure in my mind now that the Union Pacific and Northern Pacific, taken by themselves, are competing lines in the meaning of the law. I don't know whether they may or may not be." Witness was advised that the O. S. L. had the right to hold Northern Pacific Stock.

C. B. & Q. and U. P. competitors.

U. P. acted as intermediary for O. S. L.

Not sure N. P. and U. P. are competing lines.

Kuhn, Loeb and Co. sold nearly all of the Northern Pacific stock that was disposed of by the Union Pacific. "It was sold by Kuhn, Loeb and Co. on direct order of the company, for the company, up to some time in, I think it was, June, 1906, when we were no longer directors and a different transaction took place. * * We acted simply as agents of the company in effecting sales to the best of our ability, and I think I may say that we did pretty well, and that we worked off a huge amount of stock practically without depressing the market price, just as I may say we did pretty well in buying the Northern Pacific stock, because we bought about $70,000,000 of it, before anybody had any idea we were doing it. (1236) Later on a large amount of the Great Northern and Northern Pacific was sold through Kuhn, Loeb & Co. This was sold, not pursuant to a single contract but in various blocks, from time to time.

Sold N. P. stock for U. P.

Sale of G. N. and N. P. holdings.

(1237) "Q. Now, this letter (to Mr. Harriman) is dated the 5th of February, 1901, and starts out: 'Referring to our letter of even date herewith we beg to say that in financing an issue of this class of bonds and in thus inviting the (1238) confidence of our clients in the securities, it is of serious concern to us that we assure ourselves (a) that the future financial policy of the Union Pacific,' etc., etc. Then you say 'In the foregoing view we write to say that our undertaking to purchase the $40,000,000 Convertible Bonds of a total authorized issue of $100,000,000, is subject to the following further conditions, namely: 1. That so long as any such issue of bonds are unissued the Railroad Company will, until May 1st, 1906 (unless we otherwise consent) raise such additional capital as it shall from time to time require exclusively by the issue of such Convertible Bonds, namely: The bonds of said issue convertible into the common stock of the Company at par at any time within five years after their respective dates of issue. 2. That we are to have the right and privilege with respect to any additional bonds of said

Purchase of U. P. convertible bonds.

issue which the Union Pacific Railroad Company may decide to sell prior to May 1, 1906, to purchase them at the same price as the initial issue of 40,000,000 of such bonds will net the Company after the payment of the Syndicate commissions and our own. Yours truly, (Signed) KUHN, LOEB & Co.' Why didn't you embody that in your other proposition, if that was a condition? A. I know of no particular reason why. Those letters were framed by counsel, and we simply adopted their form, without giving it any further thought."

Commission on sale of bonds.

(1243) Kuhn, Loeb and Co. received 5 per cent. on the whole $40,000,000 of bonds, which witness states was only fair. "We guaranteed the company that it would get its $40,000,000 for which we received this commission. * * * Out of the 5 per cent. which we received, we gave the syndicate one-half, and one-half we kept for ourselves."

(1244) The company also paid Kuhn, Loeb and Co. the same commission, 5 per cent., on the $60,000,000 of bonds which they guaranteed to furnish,—a 5 per cent. commission for selling $100,000,000 of a new and untried issue of bonds.

Complainant offers in evidence certain testimony given by the same witness before the Interstate Commerce Commission at New York on February 27th, 1907, as an admission as to the effect in dominating or controlling a railroad of the ownership of 30 per cent. of its stock by one individual or corporation. "Q. * * * You considered, did you, when you sold this 105,000 shares, and these other gentlemen sold the 90,000 shares, to the Union Pacific, that that gave the Union Pacific a dominating interest in the Illinois Central? A. I thought it gave them an interest, which, if it wanted to, would practically amount to a dominating interest, yes. Q. What you mean by that is this, considering the fact that at stockholders' meetings of a corporation like the Illinois Central, it is never possible to get a full vote. (1245) A. Yes. Q. And in consideration of the fact that the management can get any proxies, through brokers and others, anyone owning thirty per cent. of the stock as the Union Pacific now does, is in a position to control the election? A. Unless— Q. Under ordinary, normal conditions? A. Well, yes; if he can count upon the entire support or neutral attitude of the remaining seventy per cent., if there is nothing to put that remaining seventy per cent. into an attitude where they will combine against them."

Control of Illinois Central.

PITTSBURG, PA., JAN. 27, 1909.

Johnson.

(1250) C. O. JOHNSON.

Pittsburg. Traffic Manager Heinz Pickle Co.

Resides in Pittsburg. For three years Traffic Manager of the H. G. Heinz Company, pickle manufacturers, at Pittsburg. Mr. Herring, the representative of the U. P. and S. P., solicits business from witness. (1251) He doesn't attempt to solicit for one company as against the other; to route traffic one way or the other. Before coming to Pittsburg witness was Assistant General Freight

Agent of the Chicago Great Western in Chicago and formerly was General Agent and Superintendent of Terminals of the same line at Kansas City, Mo., and previous to that for two and a half years was General Agent of the same road at San Francisco, and prior to that was General Supt. of Pacific Coast Railway Company, running from Port Harford to Los Olivos in California. During the time witness resided in San Francisco, traffic moved from the east into San Francisco over the Canadian Pacific via Vancouver and boat, and also from Tacoma and Seattle over the Pacific Coast Steamship Company's line in connection with the Northern Pacific. Likewise from the south over the Panama route and around Cape Horn, or through the Straits of Magellan. S. P. and U. P. then maintained separate solicitors in San Francisco.

Eastern traffic to San Francisco via Can. Pac. and boats.

(1252) Witness worked with the line via Ogden in order to connect with his line either at Kansas City or St. Joseph. So far as witness knew, the U. P. agency was working that line exclusively. There is now no competition in rates. Freight is now solicited by means of the expediting of shipments, prompt care of the same, tracing in case of delays, advising dates of delivery, and prompt settlement of damage claims. Heinz Co. forwards only all-rail to the California coast. Reason for preferring all-rail is "the question of the breaking of bulk and dispatch." Shipments are principally from Pittsburg. (1253) Shipments move out of Pittsburg over the B. & O. to Chicago, then over various lines from there to Omaha, connecting with the U. P., or, witness sometimes uses the line via Chicago to Kansas City, and gives to the lines there that can deliver to the S. P. at Ogden. Shipments also move out of Pittsburg over the Pennsylvania lines; also the Pittsburg & Lake Erie, in connection with the Lake Shore & Michigan Southern. Never routes by New Orleans on account of time. For Southern California, routes over the S. P. via El Paso. The lines over which traffic goes in reaching the Missouri River have solicitors at Pittsburg. All the above mentioned lines have them.

Uses all rail routes.

(1254) All shipments to California over the U. P. go over the S. P., or to Southern California over the San Pedro. At the time witness lived in San Francisco, the Canadian Pacific was making a fight for the differential via Vancouver to San Francisco. A great deal of dead freight moved that way. (1255) Has known of lots of 400 or 500 cars of tin plate moving via Vancouver. Differential fight was on during the entire two years and a half witness resided in California. An average of 50 or 60 cars a month went that way. The two years and a half witness lived in California would end with 1901, he thought. (1256) It is very important for solicitors to work with connecting lines. Securing the co-operation of the line on which the traffic originates is very important.

Can. Pac. differential.

Solicitors work with connecting lines.

Meant 50 or 60 cars a month moved over the Great Western line in connection with the Canadian Pacific. Traffic was moving over other lines from Chicago to St. Paul in the same way. The lines between St. Paul and Chicago at that time were the C. M. &

Traffic via Can. Pac. and Great Western.

St. P., the C. B. & Q., (1257) the Wisconsin Central, the Iowa Central, in connection with the M. & St. L., the Chicago & Northwestern, and Chicago Great Western. Traffic was delivered at the Minnesota Transfer, to the Soo, which is a Canadian Pacific line. As a rough guess, witness thought the difference in distance from Chicago to San Francisco via Vancouver and via the O. S. L. to Portland was between 400 and 500 miles. The S. P. then had solicitors both for the Sunset route and for the Ogden route, working separately. (1258) Witness thought the difference in distance to San Francisco via the Ogden route and the Vancouver route would be 800 to 1,000 miles, and at equal rates a very small amount of traffic might move over the latter route on account of personal consideration for the solicitor, and because of some question of claim settlement. Witness thought the difference in time five or six days.

Morgan line.

(1259) Witness understood that the Morgan Line route out of New York had been largely used by Pittsburg shippers, and thought (1260) that route was even longer than the Canadian Pacific route. Knows that the facilities for transferring freight at Algiers and New Orleans are very good, and that the Morgan Line is under the same management from New York to destination in California, and in his judgment it was this excellent service that enabled the Sunset route to successfully compete with the all-rail lines at the same rates. (1261) The all-rail lines are actively soliciting freight out of Pittsburg for Pacific coast points. The U. P. and S. P. are not soliciting against each other.

Bihler.

(1261) L. C. BIHLER.

Pittsburg. Traffic Mgr. Carnegie Steel Co.

Resides at Pittsburg. Traffic Manager of the Carnegie Steel Company since January 1, 1904, and before that, (1262) since April 1, 1895, assistant to the former Traffic Manager. Witness ships to the Pacific coast all-rail. There are 29 or 30 plants scattered all the way from Columbus, Ohio, on the west to Donora, Pa., about 40 miles from Pittsburg, on the east and south. There is a blanket rate to the Pacific coast over all-rail lines on all the commodities that witness ships from each of the plants. As far as witness can recall, that has always been the case. Witness' Company's shipments usually went to the principal cities, ranging from Portland and Seattle down to Los Angeles and Southern California.

All-rail blanket rate.

Steel and iron traffic divided.

(1263) Divided their business between all the combination routes into California. Some business to Puget Sound points moves via the Oregon Short Line. In California some went via Iron Mountain, Texas & Pacific, El Paso, the S. P., over the M. K. & T., and T. & P. via El Paso, or via the various roads. There are numerous ones which cross the Rockies, like the Colorado Midland, Denver & Rio Grande, the Salt Lake; some via the Atchison; some via the San Pedro. Delivers to the Atchison at various points; sometimes gave them the long haul, sometimes the tail-end haul, deliver-

ing to them as far west as Pueblo. Remembers that prior to 1901, U. P. and S. P. had separate offices at Pittsburg which were consolidated about 1901. (1264) Doesn't recall that the S. P. solicitors prior to 1901 gave any preference to the New Orleans gateway over the Ogden gateway. Were glad to get it either way. Distinctly remembers that they tried to get it both ways. U. P. tried to get it via Kansas City or Omaha.

S. P. solicitors, prior to 1901, gave no preference to N. O. gateway over Ogden gateway.

(1265) Believes that prior to 1901, the S. P. Co. solicited Oregon business, as also did the U. P. Carnegie Steel Company has no Oriental business. This is carried on by the United States Steel Products Export Company, which routes via the Suez from the Atlantic seaboard. In the past some has moved via the Pacific coast. Business witness had in mind, he thought, moved via Tacoma or Portland, and the steamship line allied to the Great Northern Railway and the Northern Pacific. Thought it was the Japanese line. Believes that traffic was equally divided beween the N. P. and Great Northern. Thinks it was prior to 1901. Doesn't recall any Oriental business through San Francisco. The shipments above referred to went via Portland and Seattle. Thinks some of the steamers loaded at each port.

Oriental business.

(1266) From Pittsburg to Omaha is about 970 miles, and the short line distance to New Orleans about 1,140. To Kansas City about 900 miles. Traffic from Pittsburg territory to either of those connections could be handled by any one of a great number of lines. Roughly speaking, there are 40 or 50 combination routes from Pittsburg to the Pacific coast. All the carriers interested in these routes have solicitors in Pittsburg. All rail business for points south of Portland must go over the S. P., the Atchison, or since 1905, over the San Pedro. (1267) Any California freight shipped over the U. P. must go into California over the S. P. or San Pedro. Witness never routed any freight over the S. P. to Portland, but took the shorter lines. It was not a satisfactory route. Never shipped to California by way of Portland either. In the old days, witness sometimes shipped over the Ogden route, and thence by the S. P. to Oregon. (1268) Freight going via Puget Sound to Portland-California points could not reach the interior without going over the S. P. or the Atchison.

Many combination routes.

Shasta route not a satisfactory one.

(1268) WILLIAM J. BOGERT.

Bogert.

Since the 10th of May, 1908, has lived in Allegheny. Connected with the San Pedro road. Prior to that lived in New York all his life. For 21 years employed by the Chicago & Alton, and (1269) for 23 years before that, the Pennsylvania Road. Was General Eastern Agent of the Alton. Hawley (S. P.) used to endeavor to route traffic by way of New Orleans and Tenbroeck (U. P.) by way of Ogden. They were in competition with each other. (1270) Mr. Herring represents both the U. P. and S. P. at Pittsburg. Witness comes in contact with him and his assistants in the solicitation of business. Asks Herring's assistance, as agent

Allegheny. With San Pedro road.

Neutral between San Pedro and S. P.

of the U. P., in routing business; Herring is quite neutral between the San Pedro and S. P. beyond Ogden and Salt Lake. Herring doesn't try to get business away from witness for the Sunset route.

Solicitors induce by service.

(1271) Solicitation now consists in offering quicker service and prompt settlement of damages. Prior to the construction of the San Pedro, Pacific coast traffic for points south of Portland going over the U. P., had to be delivered to the S. P. (1272) Mr. Herring tries to secure the business either for the U. P. or S. P. by the route that will give them the longest haul. He works the Ogden, the Omaha, the New Orleans, and the El Paso routes. Doesn't try to divert any business from the San Pedro that witness controls. Understands the U. P. owns a half interset in the San Pedro, but they don't help witness at all. There are many lines that have established rates from Pittsburg territory to the Pacific coast. There are a great many lines between Pittsburg and the Missouri and Mississippi Rivers that unite in establishing rates to the Pacific coast, and all these lines have solicitors here at Pittsburg.

Service to Pacific coast improved.

The service to the Pacific coast has been improved since 1900. Competition has forced that. The Atchison is an active competitor for that business.

(1273) Also its connections east of Chicago and the Missouri River. Witness never heard that S. P. was interested in San Pedro. All the railroads east, as well as west, have been bettered since 1901. S. P. has a boat line sailing three or four times a week out of New York.

Boat line traffic.

(1274) The boat line carries traffic destined for the Pacific coast, and also for Colorado and Utah common points. The U. P. only to a slight extent, witness thought, reaches those points in connection with the rail lines to the east. When connected with the Alton, witness handled business into Colorado common points, in connection with the U. P. The U. P. and Alton were then actively soliciting that business. The Alton at that time participated in the carriage of Pacific coast business, as all other lines east of the Missouri and Mississippi Rivers did.

Ewer.

(1274) A. B. EWER.

Pittsburg, Frt. Agt. Fire Brick Co.

Resides in Pittsburg. (1275) General Freight Agent of the Harbison-Walker Refractories Company, manufacturers of fire brick, at Pittsburg. Their products go into the mining countries in the west, where smelters are; not much to California; more around in through the central section of the country, to the big steel mills, and propositions of that sort. Formerly witness was Contracting Freight Agent of the Central States Despatch in Philadelphia. That is controlled by the B. & O. and the P. & R., and their allied interests. That line sent freight all over the United States; Pittsburg and the west; anything based beyond 60 per cent. points. Central States Despatch moved the freight to the coast beyond the Missouri River any way they could get it, and solicited business, if controlled by the consignees, from the western lines; if controlled

by the shippers, from the shippers direct. If the traffic was controlled by the shipper in the east, as between the coast lines, it was a trade off, a question of reciprocity.

(1276) Witness thought he had been with that freight line eight or nine years, and solicited all kinds of traffic. His principal business was what is known as package freight, but he didn't confine himself to that. At that time the S. P. had an agency in Philadelphia, soliciting for the Sunset route. The business that the S. P. tried to take out of Philadelphia for its boat line went to New York either by the Clyde line or all-rail. (1277) Herring called on witness quite regularly. Any business that comes up, Herring generally says he would be glad to get over any of his lines that he can get it. Witness' freight never goes to the coast by boat and rail. He doesn't like to break bulk, and the brick are liable to be chipped in handling. Occasionally ships into Cleveland by rail and Lake. (1278) There are a great many carriers engaged in Pacific coast business between the points of origin and the Missouri River, all of which have solicitors actively working for business, both in connection with the U. P., S. P., and the Atchison. All business for California that goes over the U. P. must also go over the S. P. or San Pedro. When witness was working for the fast freight line in Philadelphia, the S. P. agents were then working the freight by several different routes.

Herring glad to get the business over any of his lines.

All U. P. business for Calif. must go over S. P. or San Pedro.

(1278) JAMES E. HENRY.

Henry.

Resides in Butler Co., Pa. Traffic Manager of the Standard Sanitary Manufacturing Company for a little more than a year. Previously, for a little over two years, in the Traffic Department of the same Company, and formerly worked in a minor position in the Traffic Dept. of the Pressed Steel Car Company, for four years, and for the American Window Glass Company for two years. (1279) Before that, for quite a number of years, was with the Pennsylvania system, as messenger boy, rate clerk, claim clerk, etc. Was also with the B. & O. for about two years, as rate clerk in their commercial freight agent's office. Prior to 1901, witness "judged naturally" the S. P. would take the long haul and route its business via New Orleans, and the U. P. via Kansas City or Omaha. His recollection was that the S. P. at that time solicited Portland business by Sunset route. Witness' California business now routed via the U. P. and S. P., via the Santa Fe, and via the San Pedro route, in connection with different lines leading up to those lines.

Traffic Mgr. Mfg. Co.

(1280) The Portland business to a great extent goes via the Northern Pacific and the Great Northern. Some via the U. P. and O. R. & N. The N. P., Great Northern, Atchison and U. P. each maintain soliciting agencies at Pittsburg. Herring and his assistants solicit freight for both the U. P. and S. P., and never intimate to witness that they have any preference. In summer witness has quite a large movement to North coast points by the lakes. Sends

Freight solicitors at Pittsburg.

it chiefly via Cleveland or Erie, in connection with the Mutual Transit; also the Anchor line; some via Buffalo and the New York Central's boat line in connection with the various rail lines leading west from the Lake terminals. It goes chiefly to Duluth, although occasionally cars are sent via Chicago. From Duluth it goes over either the Northern Pacific or Great Northern, and C., St. P., M. & O. and U. P., and their connections. The C., St. P., M. & O. have a line leading from Duluth to Omaha, connecting there with the U. P. The line last mentioned competed with the other lines for witness' Portland business.

Routing of his traffic.

(1281) Doesn't recall that the American Window Glass Company shipped that way at all. Thinks lake route has a differential as against the all-rail line. Would not get the business unless they did. At least, not on the class of goods witness shipped. He thought there was a differential on all business, but could only testify as to his own. The Standard Sanitary Mfg. Co. has three factories at Pittsburg, north side, at New Brighton, about 30 miles from Pittsburg on the Pennsylvania lines—and at Louisville, Ky. They also had a large factory at Detroit, Mich., but it was closed about a year ago. Manufactures bathroom fixtures. Their advertisement says they are the largest manufacturers in the world, which witness believes to be true. Their shipments go to all parts of the world. Lately it has been moving via Suez. When it went via Pacific coast points, it moved chiefly U. P., although some of it went over the Atchison, and by boat out of San Francisco. Never shipped out of any other Pacific coast points.

Export business.

(1282) Witness' recollection was that the Pacific Mail and the American Hawaiian Line took the traffic out of San Francisco. Do not ship by ocean vessels, if they can avoid it, on account of the liability of damage from handling. Shipments by way of the lake are handled on the decks of the vessels, and do not go into the holds of the ships. At the present time superiority of service is practically the only factor in determining the selection of routes. Has never found any better service to California points than the U. P.-S. P. line. The L. & N., the Illinois Central, the Queen & Crescent, the Southern, all have soliciting agents at Pittsburg, trying to work California business by way of New Orleans, and witness gives them some business that way on account of his friendly feeling towards the representatives here. The Rock Island, Burlington, (1283) Northwestern, the St. Paul, practically all the lines between Pittsburg and the Missouri and Mississippi Rivers have representatives here. South of Portland the U. P.'s only connection with the coast, except the San Pedro, is the S. P. Prior to 1901, the S. P. agent at Pittsburg worked both the route by Ogden and the New Orleans and El Paso routes. Never indicated any decided preference. Worked the traffic any way he could get it, taking the long haul where he could get it, and, if not, taking the other. (1284) Prior to the construction of the San Pedro, the U. P. could never have made a rate to California south of Portland,

Excellency of U. P.-S. P. service.

Solicitors at Pittsburg.

Prior to 1901, S. P. agent at Pittsburg worked New Orleans, Ogden and El Paso routes.

U. P. could not make Calif. rate without consent of S. P.

without the consent of the S. P. The concurrence of the S. P. in that rate was necessary. They could have routed traffic to Portland, and then down by boat. Any concern he was connected with did not route in that way.

Never knew Portland route to be used.

(1285) L. T. FOWLER.

Fowler.

Resides at Pittsburg. Traveling Freight Agent for the Merchants & Miners Transportation Company, an east coast line between Baltimore and Savannah, Norfolk, Newport News, running north to Boston, Providence and Fall River. Also have a line operating from Philadelphia to the same points. Works in connection with the rail lines between Pittsburg and the coast. Solicits all classes of business. Does not participate in any Pacific coast business. Employed by that line in 1894. Prior to that for two years and a half had represented the U. P. at Pittsburg, and for three years before that in Philadelphia. For eighteen years prior to that with the Lehigh Valley as Local Agent, and from that to Chief Clerk of the General Freight Agent. (1286) Competition between the U. P. and S. P. at the time witness represented the U. P. was very strong. When witness got a tip on a shipment, he tried to get it for the U. P., and the S. P. agent then worked with him, because the latter got the haul from Ogden. Naturally the S. P. preferred to take it the other way.

Pittsburg. Agent for an east coast boat line.

(1287) Never knew business to go by the Morgan Line from Pittsburg, but it did from Philadelphia. Competition was very strong there. The freight from Philadelphia to New York sometimes went through the canal and sometimes by rail, the Morgan Line absorbing the haul into N. Y. Never knew the S. P. to solicit business to Portland either by the Sunset or the Ogden route. Doesn't know whether they did for either road from Philadelphia. In 1888 and 1889, when witness was agent for the U. P. at Philadelphia, business moved to a large extent for San Francisco via Portland and the boat line down, and witness actively solicited business that way.

S. P. did not solicit Portland business.

Use of Portland route to San Francisco.

(1288) Succeeded in routing a good deal of business, mostly dry goods, that way. Sunset route was actively soliciting the same traffic. Didn't use the S. P. line at all that way. The witness and the S. P. agent once had a controversy as to whether trolley poles should be classed as iron pipe or not. Witness thought the higher rates should apply, but the S. P. agent differed with him, and in order to get the business he applied the lower rate. (1289) Herring in this case of "competition in reading tariffs," witness thought, was trying to get the business via New Orleans. Personality and service are the principal elements in solicitation. Service includes through cars, close connections, through trains, time. The soliciting agents look up rates for the shippers, which are in some cases complicated. Witness sees no reason why the attitude either of the U. P. or S. P. in the matter of settling claims or treatment of shippers should now be different from what it was formerly.

Service improved by through cars and close connections.

(1290) They have the same inducement to treat the shippers well, because there are many other lines actively competing for California business. The trolley poles finally moved over the B. & O., the Chicago & Northwestern, in connection with the U. P. for 1,000 miles, and the S. P. for 850 miles. Competition was between the Sunset route and the all-rail lines, of which the S. P. was a part. During 1888-9, when witness used the Portland route for San Francisco, that lasted only a few months. It was due to a temporary disturbance. (1291) In 1891-2-3 witness didn't solicit via that route. Never knew any freight to move that way, except during that short period. Just as much competition now for Pacific coast business as there ever was, except in the matter of cutting rates. Didn't mean to say the U. P. and S. P. were competing, but that the lines leading up to the line of the U. P. were competing.

Use of Portland route lasted only a few months.

Just as much competition as ever.

(1292) There is the same competition between the lines leading from here to the Missouri or Mississippi. Witness' line transports business from Pittsburg territory. Loads it on to boats at Baltimore or Philadelphia, and, if going north, transports it to Boston, in competition with all-rail lines. There is a differential because the cost of handling the business on the sea is cheaper. The differential enables witness to compete with the all-rail lines to various coast points. The disturbance that sent freight around by Portland was due to some difficulty about handling traffic at Ogden; a competitive measure on the part of the U. P.

Disturbance that sent freight via Portland.

Intensity of competition not diminished.

(1293) Since 1889 the U. P. never found it to its interest to use the Portland route. The Atchison and its eastern connections, and the U. P. and S. P. and their connections, carry on a competition for Pacific coast traffic as active as it ever was. There has been no relaxation in that competition. (1294) All the intermediate lines are just as effective in their competition to-day as the U. P. ever was. They operate as large a proportion, if not a larger proportion, of the through mileage, as the U. P. did. Except by agreement, the U. P. never had any rate making power to the Pacific coast south of Portland, outside of the boat line. Aside from the elimination of the competition between the U. P. and S. P., the situation on Pacific coast business is about as it was then. That was a competition in which the S. P. and U. P. were connecting lines, and if the S. P. got the business the way it wanted it, it went to New Orleans.

Paar.

(1295) ANDREW PAAR.

Canton, Ohio. Diebold Safe & Lock Co.

Resides at Canton, Ohio. For about 25 years has had charge of the shipping business of the Diebold Safe & Lock Company, Canton, Ohio, about the largest manufacturers of similar articles in the United States. (1296) Ship a good deal to the Pacific coast. The lines employed west of the Missouri and Mississippi Rivers, are the U. P., the S. P., the San Pedro, and the Santa Fe, and for North Pacific points the N. P., G. N., and some traffic by the S. P. A good while ago shipped to California points by way

of New Orleans and the Sunset route. Made a few shipments that way recently, but they were routed by the consignees. Quite a good deal of witness' business is routed by the consignees. Ships by the Hawaiian Line to the coast. Sends that traffic to New York by rail, (1297) thence south by water to Mexico, across Mexico, and up by steamship. The rates by the American Hawaiian Line are lower than all-rail rates. About $1.75 per hundred from Canton to San Francisco all-rail, and about $1.05 by the American Hawaiian route. A good while ago shipped by the Q. & C. to New Orleans, and thence up the Pacific coast by the S. P. Think they made one shipment, partly by rail and water; forgotten exactly how, some time ago, but it was not satisfactory. Witness' goods are highly finished, and they were marred by handling. There are four or five handlings by the American Hawaiian Line; more handlings than shipping to North Pacific coast points, and down by boat. (1298) Prior to 1901, witness remembers shipping to Portland by Ogden over the U. P. and the old Central Pacific route. Most shipments now go Northern Pacific, and some Great Northern and Canadian. Doesn't ship much by the U. P. and Nav. Co. Has no recollection of business moving years ago by rail to Portland, and thence by boat to San Francisco, nor vice versa.

American-Hawaiian Line rates.

Water and rail rates not satisfactory.

Portland-Fri co route not used.

(1299) Prior to 1901 was solicited both by U. P. and S. P. agents. U. P. agent, witness thought, lived in Cleveland, and S. P. man in Cincinnati. The latter tried to move traffic by way of New Orleans, and former by Omaha. Now the U. P. doesn't solicit against the S. P. Mr. Connor and Mr. Hild come to see us now. They represent both lines. Mr. Connor lives in Cincinnati. Likes to have freight move by New Orleans, but does not object to having it go by Omaha. Canton is 100 miles from Pittsburg, and takes the Pittsburg common point rate. (1300) Personality is the large element of solicitation. The agent looks after the shipment, traces it, and advises shipper when it leaves different junction points, that is, when the shipper is in a hurry. Witness is quite often in a hurry. There is no haste in connection with the American Hawaiian shipments. It takes 30 or 50 days that way from Canton to San Francisco; all-rail, from 14 to 20 days. In 1907, at the time of the great congestion of traffic, it took thirty days. Witness is packing his goods differently now, but the difference in rate by the American Hawaiian Line would almost enable the goods to be refinished in San Francisco and save money; have a large store and warehouse in San Francisco; also at Los Angeles and Portland.

(1301) Witness ships via all the rail lines reaching California. Divides the traffic up. There are many rail lines reaching Pacific coast. Ultimately traffic goes over either the Atchison, the S. P., or the San Pedro, but east of those lines there are many connections, all of which have their separate solicitors, and that is also true of the lines reaching New Orleans. Prior to the opening of the San Pedro, all witness' shipments that went over the U. P.

also went over the S. P. in reaching California. (1302) The distance from Canton to Omaha is less than from Canton to New Orleans. Prior to 1901, when the two roads had separate solicitors, the S. P. representative solicited by way of Ogden, if he could not get it by way of New Orleans.

Prior to 1901, S. P. solicited via Ogden if it could not get the business via New Orleans.

Townsend.

(1302) J. F. TOWNSEND.

Pittsburg. Traffic Mgr. Nat. Tube Co.

Resides in Pittsburg, Pa. Traffic Manager of the National Tube Company for nearly ten years. Previously in the railroad business for twenty years, with various companies; The Cleveland, Lorain & Wheeling, the Lake Shore & Michigan Southern, and the Wheeling & Lake Erie. Company manufactures steel pipes. (1303) It is probably the largest concern of the kind in the country. Plants are located in the Pittsburg district, except one at Kewanee, Ill., but all take the same rates to California points. The Illinois plant takes a less rate to the Northern coast. Routes business to the coast from Pittsburg district about twenty different ways. It moves over the five trans-continental lines, namely, S. P., Atchison, Northern Pacific, Great Northern and Canadian Pacific.

Uses 20 different routes.

(1304) Some of it moves over the Union Pacific and Southern Pacific into San Francisco, and some over the U. P., Short Line and Nav. Co. to Portland, but very little. The latter line hasn't been used until recently. Formerly the Northern Pacific and Great Northern were used. Doesn't think he ever moved any freight via New Orleans and the Sunset route. At all events, very little. In the old days the consignee had something to say about routing. Now witness sells delivered, prepaying the freight, and has the routing. Ships to the coast via El Paso. Freight goes over Texas Pacific, Rock Island and various routes to El Paso, and thence via S. P. (1305) In shipping freight to Southern California the trans-continental lines west of the Missouri and Mississippi Rivers, which witness employs, are the Atchison, San Pedro, and to some extent, the S. P. Does not ship much over the U. P. to Southern California. Freight for the San Pedro goes over the various lines leading up to Colorado junctions. Tries to divide it up as fairly as possible among the different lines. San Francisco business moves over the Atchison and S. P., generally. Some of it over the U. P. and S. P. from Ogden. What the U. P. gets does not represent the S. P.'s share of the business, because witness gives the D. & R. G., the Colorado Midland, those Colorado routes, the S. P., Rock Island, Burlington—all of them, a share of the business.

Sunset Route not used.

Divides traffic among different lines.

(1306) When Hawley represented S. P. in New York, there was competition between it and the U. P. for coast business. Witness supposes there is naturally no competition here between the two lines for trans-continental business. In soliciting business the important element is time, service. (1307) S. P. forms a part of the U. P. trans-continental line for California points. All the lines lying east of the Missouri River engaged in trans-continental business as connections of the U. P., Atchison and S. P. Solicita-

Important factor, time, service.

tion is now more active in Pittsburg than it ever was. Over ten agencies established there in last five years.

(1308) U. P. solicits business in connection with other lines besides the S. P. The Rock Island, Missouri Pacific, the Wabash, and various lines reaching down into the southwest, and ultimately to a connection with the Texas & Pacific or S. P. at El Paso, are actively soliciting that business, and there are a great many new smaller lines that have wide-awake fellows looking for business. Various lines actively solicit business by way of New Orleans—the L. & N., Illinois Central, and Q. & C. The result of this solicitation is that witness would naturally give the new routes a chance, and if they made good, give them more. Has never sent business to California by Portland and down by water. No dead freight. All time freight. (1309) No freight has moved that way, to his knowledge. Would lose his job if he sent any that way. In stating that the U. P. solicited trans-continental business in connection with other lines than the S. P., witness had the S. P. in mind. The U. P. solicits also in connection with the San Pedro. U. P. and S. P. now have common soliciting agent at Pittsburg. (1310) Pittsburg district originates more tonnage than any other in U. S.

Never used Portland route to California.

(1310) F. A. OGDEN.

Ogden.

Lives at Crafton, a suburb of Pittsburg, and is general freight agent of Jones & Laughlin Steel Company, and has been general agent for the last 14 or 15 years. Was in their shipping department four or five years prior to that. (1311) Jones & Laughlin largest steel concern in U. S., outside of U. S. Steel Corporation. Their existing plants are located in Pittsburg; manufacture structural steel. Have a fairly large business on the Pacific coast. Shipments to California are divided between the S. P., Atchison and San Pedro, and to North coast points between the Great Northern and Northern Pacific. A car or two, possibly, a year, will go by the U. P. and Nav. Co. to Portland. Part of the business going through Salt Lake and Ogden goes via the U. P. and S. P., and part via the Colorado Midland, part by the D. & R. G. from Denver, using the Rock Island or "Q," or some of those lines up to Denver. Doesn't ship by New Orleans, and doesn't recall but one or two cars during the last year by El Paso.

Pittsburg. With Jones & Laughlin Steel Co.

Routing of his traffic.

(1312) Southern California business moves via the Atchison or the U. P., or the Colorado Midland, or D. & R. G., in connection with the San Pedro. Also sends some, but not much, by the U. P. and S. P. to Los Angeles. Goes via Ogden and Sacramento. Formerly shipped by Sunset route to California points. Stopped eight or nine years ago. Shipped to California by the Canadian Pacific and boat lines during the time of the differential. As witness recalls, he shipped quite a good deal for that day. Now ships a little by the American Hawaiian line. Business that way is increasing. Thought Tehuantepec Railroad line across Mexico about 180 miles. There is a differential that way of nine cents

Tehuantepec route.

a hundred; 71 cents that way; 80 by all-rail. (1313) From New York the American-Hawaiian line takes from 19 to 33 days to the Pacific coast. Shipments from Pittsburg to New York three or four days. A rush shipment sometimes goes through in 36 to 48 hours, so that it is now possible to rush a shipment from Pittsburg to San Francisco by the Tehuantepec route in 21 or 22 days. All-rail usually takes two or three weeks. There is very little difference in the time. Most of the goods are not damaged by handling. Those that may be damaged are sent all-rail. Prior to 1901, U. P. and S. P. had separate agencies in Pittsburg.

Joint, as effective as separate, agencies.

(1314) Knows of no reason why a joint agent of the S. P. and U. P. at Pittsburg should not serve those two companies as effectively as separate agents. (1315) In the trans-continental business, the S. P. can get along very well without the U. P., but the latter could not get along without the former. While there were two agencies, the S. P. agent tried to get business by way of Ogden, when he could not control it by way of New Orleans. Tried to get it either by New Orleans, El Paso or Ogden. Preferred New Orleans, because he got a longer haul. The Texas Pacific and Rock Island are actively soliciting by way of El Paso, and the result of their work inures to the benefit of the S. P. as against the Atchison. The St. Paul, the Northwestern, and various lines reaching the Missouri River, are all actively working for that business, too.

S. P. tried to to get business via New Orleans, El Paso or Ogden.

(1316) And that ultimately inures either to the benefit of the S. P. or Atchison, and of the U. P. also. One soliciting agent could not work the Ogden route against the Sunset route. Witness thought the more agencies in Pittsburg, the better, but so far as his purposes are concerned, two men of equal ability jointly representing the S. P. and U. P., would be as good as two separate representatives. (1317) If the U. P. and S. P. had separate agencies in Pittsburg, witness doesn't think he would give them more business than at present, but it might make a difference in the distribution of traffic as between the Sunset and Ogden routes. The S. P. could demand that they were rightly entitled to some of the long haul freight by way of New Orleans.

Reciprocity in routing.

(1318) Routing freight is getting to be a case of reciprocity. Companies that buy supplies from witness are preferred. The establishment of a separate agency at Pittsburg by the S. P. would not change witness' policy of routing traffic, so far as the S. P. is concerned, not to San Francisco and Northern California points. It all depends upon how much pressure the S. P. put upon him. They buy materials he manufactures, and are entitled to recognition in carrying shipments. (1319) Having a separate agency at Pittsburg would not affect the question of reciprocity. Doesn't really see any objection to having a joint agent. He practically represents one line, and can do what the other two men would have to do. Consulting his own feelings, witness would prefer two agencies, but cannot specify anything they could do if they were here. Thinks Mr. Herring fulfills all requirements.

(1321) His traffic moves to Southern California by San Pedro and S. P. to some extent. Doesn't move by the New Orleans or El Paso gateway to San Francisco. Goes by the Santa Fe, San Pedro and S. P. Does not move anything to Southern California by Sunset route. Formerly shipped via El Paso, but not now. The reason for that is the old question of reciprocity. Lines between Pittsburg and El Paso are not heavy purchasers. Would favor the Illinois Central if he shipped by New Orleans. (1322) Does not now ship over the Can. P. The largest portion of shipments to Japan has gone by Seattle over the Great Northern. Has never shipped anything by San Francisco, except, perhaps, a small box of samples. If the U. P. and S. P. were entirely separate, unless the former became purchasers of the witness, he would eliminate them altogether. (1323) Gives them a share of his business because they make quick time. Hasn't shipped any freight around by New Orleans for from seven to nine years. Reciprocates with the S. P. by giving them freight from the U. P. or D. & R. G. and Colorado Midland, because the time by the western gateway is much better than by New Orleans. Routing of his traffic.

(1324) Only gives freight to the U. P. because of their superior service. Doesn't ship by New Orleans now, because the Harriman lines have a good line by Ogden, and make the time that way. (1325) If Harriman lines purchased more, witness would still ship that way. Doesn't mean to say that if the S. P. would now buy more, he would ship more by way of New Orleans, not the way the situation is now. If the S. P. would come and demand that he ship that way, it would have consideration at his hands. The S. P. could do that to-day, but they are satisfied with shipments by way of Ogden. It is immaterial to the S. P. how he sends it. (1326) The U. P. and S. P. having been amalgamated, witness regards it as immaterial to the S. P. whether the freight is sent by Ogden or New Orleans. Gives freight to U. P. only because of superior service.

(1327) The combined total of the business that witness shipped over the Colorado Midland, the D. & R. G., and the U. P., makes up what he considers a fair share of business for the S. P., but if that road came to him and demanded some business by New Orleans, he would have to give the demand consideration. Whether he would give that route much business, would then have to be determined, but he would rather ship by Ogden, because of the better time. If witness had nothing to consider except the service rendered, he would "give it to the Union Pacific at Omaha always." (1328) Reciprocates S. P.'s purchases by sending by way of Ogden, but not always over the U. P., although witness considered them practically one line. Mr. Hawley worked hard to get the business by way of New Orleans. Mr. Herring tried to get it at any junction point. The former's work was to the disadvantage of the shipper. Witness didn't accede to Hawley's solicitations because in those days the man who knew the manufacturer didn't control the routing. Ogden route preferred.

Lent.

(1328) JOHN F. LENT.

Pittsburg. Traffic manager of industrial concerns.

Resides in Pittsburg, and for four years has been traffic manager for a number of large industries, and two associations of manufacturers, which he named. (1329) Their plants are located at Pittsburg or Pittsburg common points. Previously traffic manager of the Union Steel Company, and prior to that commercial agent of the Pere Marquette system for two or three years, 1899 and 1900, witness thought it was, and prior to that with the Pennsylvania lines, starting with that Company in 1889 as messenger, and filling the different offices to chief clerk in the division freight office. (1330) Before the consolidation, the S. P. seemed to contend for the long haul via New Orleans. Witness didn't know of any competition at that time between the U. P. and S. P. for business to Portland. Movement by the Morgan line was not practical, from a rate standpoint, from the Pittsburg district, but only from points east. Witness doesn't think there was ever a time when the rail rates from Pittsburg to New York were absorbed by the Morgan line.

(1331) All the trans-continental lines had agencies in Pittsburg prior to the consolidation of the U. P. and S. P. Work of solicitation performed by the agents described. No competition between U. P. and S. P. since 1901, so far as witness has observed.

Nails via Portland.

(1332-1333) Remembers eight or nine years ago shipping some nails via Portland, and then down by sea to San Francisco. Has never used the Can. P. route via Vancouver to San Francisco. (1333) Knew of some Oriental business going from Pittsburg by the Pacific coast, as a matter of hearsay. Witness remembered years ago that some business moved to Portland, Oregon, by the Ogden gateway and Central Pacific, but never made shipments that way himself. Has shipped by the Panama route to the Pacific coast, that railroad owning the steamship line from New York to Colon, and from Panama north to San Francisco. The witness didn't know whether the shipment went over the Pacific Mail, or not. Has had shipments that way off and on at long intervals ever since he has been in business. That route has always been open. There is a substantial differential prevailing as compared with the all-rail rates.

Panama route.

(1334) The Tehuantepec line gets a higher rate than the Panama. Their service is better. Witness once sent a shipload around by the Horn. The tariff was less. Has never shipped from Pittsburg over the Morgan line to California points, but has to Texas points. (1335) There are various lines from Pittsburg to the Missouri River and the Rocky Mountains, which, as connections of the S. P. or Atchison, form through routes to the coast, and shipments may be made via New Orleans, El Paso, or Ogden, over the S. P., or via the Atchison. Before the amalgamation, the S. P. agent worked preferentially for the New Orleans route, but if he couldn't get it that way, worked for the Ogden route or the route via El Paso, preferring the route that afforded him the longest haul.

Before 1901 S. P. worked preferentially for New Orleans route, and if traffic would not go that way, then via Ogden or El Paso.

(1336) Besides the shipment of nails, witness never knew of any freight to go from Pittsburg to San Francisco by way of Portland. That shipment was six or seven years ago. Doesn't know whether that shipment up to Portland went over the U. P. or Northern Pacific. Doesn't recall the routing. Went by water from Portland to San Francisco. Recollection about the shipment is faint. (1337) With that exception, all shipments controlled by the agents of the U. P. before the amalgamation, as far as witness knew, went to California over the S. P. Witness sees no reason from the standpoint of the shipper or of the railroad company, why, with the same activity that two representatives would give, a joint agent could not represent both the companies, as well as separate agents. There is competition enough by the Atchison and its connections to stimulate activity. All the eastern connections are very active in Pittsburg territory. The S. P. line by way of New Orleans is not an advantageous one. Competition of the Atchison is enough to stimulate a spirit of reciprocity in the S. P.

With exception of the nails, all other U. P. shipments for Cal. went S. P.

Competition active and sufficient.

(1338) Doesn't think the separation of the U. P. from the S. P. would improve the situation. If the Atchison agency was also turned over to Herring, competition would be eliminated between the three roads. The amalgamation of the U. P. and S. P. eliminated competition between the S. P.'s southern route and the Ogden route. The rates have been the same via all the routes for many years. (1339) Witness didn't know about divisions among connections, but thought they had remained unchanged for many years, so that the U. P. was free to get all the business it could, without fear of losing part of its divisions, and its agency did work actively for business. The Atchison has its own line to California points, with which to compete with the S. P. for California business, but the U. P. cannot get to California except in connection with the S. P., nor could the U. P. make a rate to California without the concurrence of the S. P. "The Southern Pacific would be the ruling factor," and control the situation so far as the U. P. is concerned.

Separation of U. P. from S. P. would not improve situation.

(1340) Knows of no reason why the S. P. shouldn't change the divisions, if the U. P. attempted to give concessions. S. P. cannot make a rate of itself from Pittsburg to California, but only in connection with other lines. (1341) The rates are made by concurrence, through bureaus. No one line controls it. All the lines have to concur. If the rate is lower, the other lines have to meet it.

S. P. cannot make through rate alone.

(1342) If there was a disagreement between the U. P. and S. P. as to divisions, or as to tariffs, at Ogden, the U. P. would have no outlet for transcontinental business, except by way of Portland and the boat line, whereas the S. P. might have forty, in that it could establish rates with the D. & R. G., with its connections at El Paso, and with various lines that it connects with in Texas and at New Orleans. If the divisions were not satisfactory, the rates could not be put in. If the U. P. attempted to coerce the S. P. by

Advantages of S. P. over U. P. in connections.

using the Portland route to California, it would suffer more by the S. P. transferring its business to the D. & R. G. at Ogden, instead of treating the U. P. as its preferred connection, (1343) because of the fact that the S. P. would control the larger tonnage. At Omaha the Northwestern and St. Paul, the Illinois Central, the C. B. & Q., the Wabash, the Chicago Great Western, and the Rock Island, connect with the U. P., and it would not be an advantageous thing for the S. P. to antagonize all these lines that are sending their business over the U. P. Irrespective of the fact that the law requires the S. P. not to discriminate against the U. P., the former could not afford to do that, in view of the enormous traffic that is controlled by those lines east of Omaha. Witness thought that a correct statement, with the modification that shippers are a factor in selecting the route. Both lines have a certain element of strength to compel the other to do it justice. (1344) Every one of the lines mentioned, that is feeding the U. P. at Omaha, can just as well feed the D. & R. G. at Pueblo, and reach the S. P. at Ogden that way, without going over the U. P. (1345) They are not dependent upon the U. P. to reach the S. P. If the U. P. tried to work the Portland boat line, its connections at Omaha would naturally use the D. & R. G. and the S. P., rather than to attempt to work the U. P.'s route around by Portland. Even if they were to use the Portland route and get to San Francisco, they would still have to get to interior points over the S. P. Witness meant by saying the S. P. could compete with the U. P., that the former could send east-bound business by the Sunset route or over its own line to Ogden, and thence over either the U. P. or D. & R. G. "Sunset control the traffic out there largely"—the unrouted traffic. (1346) If they were operated separately, the natural tendency would be for the S. P. to send its east-bound traffic by the Sunset route. If it is impossible for Mr. Herring and Mr. Stubbs each to compete with himself, it is equally impossible for the S. P. to compete with itself, since it controls both routes. It is not impossible for the U. P., if separated from the S. P., to get business routed westward via Ogden over its line.

If U. P. attempted to use Portland route its connections would turn their freight traffic over to competitors.

PITTSBURG, PA., JAN. 29, 1909, 10:30 A. M.

Snape.

(1346) THOMAS SNAPE.

East Liverpool, Ohio.

Has lived for 25 years at East Liverpool, Ohio. (1347) Routing agent for the C. C. Thompson Pottery Company. Ships to all parts of the country. Since 1901 witness' shipments have been solicited by Mr. Herring, who represents both routes. He expresses no preference between the two.

Wells.

(1349) W. E. WELLS.

Newell, W. Va. China Co.

Resides at Newell, W. Va. Secretary of the Homer Laughlin China Company. His coast shipments were invariably routed by the consignee. For twenty years has never known it any other

way. Is familiar with the routing prior to ten years ago. Used all the transcontinental lines. Occasionally a car went by New Orleans. Doesn't recall using El Paso as a connecting point. (1350) Recalls no other connecting point with the S. P. excepting New Orleans. Frequently shipped over the Santa Fe, the U. P., N. P., and G. N. Consignees were located all along the coast. (1351) For several years witness' business in California has been done with one wholesale firm, which has two leading houses, one at San Francisco and one at Los Angeles. The consignments to San Francisco are routed by the U. P., and to Los Angeles by the Atchison. That has been the standing routing since 1898.

(1351) WILLIAM C. WATSON.

Watson.

East Liverpool, Ohio. With manufacturer of earthenware.

Lives at East Liverpool, Ohio. Superintendent of Sales of the Knowles, Taylor & Knowles Company, manufacturers of earthenware, at East Liverpool, Ohio. Employed by that concern for 30 years, first going there from the Pennsylvania Railroad, as shipping clerk, and for the last eight years having been Superintendent of Sales. (1353) Complainant's Exhibit 112, page 1353, being a postal card distributed by Mr. Herring for signature by shippers, containing a note requesting the shipper to designate the through routing. (1354) Complainant's Exhibit 113, business card of J. A. Corfield, Mr. Herring's traveling freight agent.

(1354) Complainant's Exhibit 114, letters from Mr. Herring to Witness' Company. (1355) Portland business is usually routed by the consignee over the N. P. Some of it goes to Portland over the G. N., and probably one car in ten years over the U. P. Doesn't remember any shipment going to Portland by Ogden.

(1356) Has shipped around the Horn to San Francisco, and has also made shipment by the Morgan line of steamers, but cannot recall any particular shipment, because it was some years ago. Witness' plant is in Pittsburg territory. At the present time, ship to Los Angeles by the S. P. at El Paso, and also by the Atchison and other routes. Most of the freight to Los Angeles is routed by the consignee. Very little goes by the San Pedro. Ship a few less than carload shipments that way. San Francisco business goes by the S. P. and the Atchison from different gateways, sometimes over the Rock Island, sometimes over other roads to El Paso, and at other times over the Rock Island, St. Paul and other roads into Ogden, with different connections at Ogden. Some of it goes via U. P. at Omaha.

(1357) It is pretty generally distributed among the different lines. Since the Interstate Commerce Commission is looking after things, and the rate is the same, there is not much left for witness to do. (1358) There are various other lines soliciting business for the Pacific coast, besides the S. P. and U. P., among others, the Atchison, the Rock Island, the Missouri Pacific, the M. K. & T., the Texas Pacific, (1359) the C. B. & Q., the Chicago & North-

I. C. C. supervision.

western, the C. M. & St. Paul, the L. & N., the Illinois Central. All these railroads are soliciting. "They bother you to death."

Belleville.

(1360) JOSEPH M. BELLEVILLE.

Pittsburg. With Pittsburg Plate Glass Co.

Lives in Pittsburg, Pa. Since February, 1898, traffic manager of the Pittsburg Plate Glass Company. Previously, for fourteen years, agent of the P. C. C. & St. L. Railway Company, at Wheeling, W. Va. The Glass Company makes large shipments to the Pacific coast, and very few of the transcontinental lines have failed to share in the business. (1361) Shipments to the coast are made f. o. b. factory, and are routed as directed by the consignee. All shipped to one firm, W. P. Fuller & Company, the largest glass operators on the coast, who have various warehouses at Pacific coast points from Los Angeles to Spokane. Business for Los Angeles goes largely by the Atchison, divided between Atchison and San Pedro, and some of it goes by the Chicago & Nortwestern in connection with the U. P. The San Francisco business goes by the U. P. and S. P. via Ogden. Prior to 1901 "probably the Union Pacific got a little more. They probably got more than half of it," the lines by New Orleans, a quarter, and the rest divided among two or three different routes. Prior to the amalgamation, the soliciting agents of the U. P. and S. P. competed at Pittsburg.

Routing of his business.

(1362) Prior to 1884 or 1885 bills of lading usually contained no routing, but subsequently the shippers gradually more and more specified the routing. The personal element has more to do with solicitation to-day than anything else. The S. P. is the U. P.'s only outlet to California points. (1363) In 1898 the U. P.-S. P. Ogden line was stronger than the Atchison, but now witness thought the Atchison was equally strong. (1364) The S. P. agent wanted to make the best showing that he could, and he did this by getting the long haul via New Orleans. The public is not interested in the matter of division of through rates. There are many other lines soliciting business for the Pacific Coast. All the lines lying between Pittsburg and El Paso, and connected with the T. & P. between New Orleans and El Paso, the lines reaching the Missouri River and Rocky Mountains, are actively soliciting. The Missouri Pacific and Texas Pacific have a joint agency at Pittsburg. Some of the soliciting lines mentioned. (1365) On the lines named, the business ultimately went to the coast over the S. P.

Personal element in solicitation.

Everest.

(1366) WILBUR B. EVEREST.

Wilkinsburg, Pa. With Westinghouse Co.

Lives in Wilkinsburg, Pa. About nine years manager for the Westinghouse Electric & Mfg. Co., who manufacture electrical machinery and appliances. One of the largest companies in that line of business. Has been traffic manager since September, 1900. For a short time prior to that was General Freight Agent of the same company. (1367) Route almost all their own traffic, shipping in carload lots to their own warehouses at distributing points.

Routing of his traffic.

Own warehouses at Los Angeles, San Francisco and Seattle. Also carry a small stock in Portland. Traffic moves to the coast by all the various routes. For San Francisco it is divided between the U. P. the S. P. route and the Santa Fe. No business has moved by New Orleans of late. Some years ago, during a period of congestion, considerable business was shipped over the Illinois Central and L. & N. to New Orleans, and then over the Sunset route. Witness understood that the congestion of the Northern lines made the Sunset route at that time quicker.

(1368) Uses the Ogden route, the San Pedro, and the Atchison in shipping to Los Angeles. Ships into Colorado and Utah common points by the direct lines from Chicago, either the Northwestern or the U. P., or the Rock Island. Does not recall shipping to those points by New Orleans. Has used the Morgan line of steamers, but only for Mexican business, not for coast business. Oriental business is consigned by way of New York. Taken out of witness' hands at that point. Understands it goes by Suez. There have been Oriental shipments by the Pacific coast. (1369) Recalls shipments through San Francisco and also through Vancouver, but does not recall any through Seattle. Prior to the opening of the San Pedro line, all business for California routed over the U. P. passed over the S. P. Would not choose the El Paso route, except where the customer had purchased f. o. b. factory, and requested it. All those routes were always open, but generally preferred the U. P. Ogden route. There is very active solicitation by all the intermediate carriers, and if the S. P. had no solicitors at Pittsburg, much of the business controlled by its eastern connections would necessarily go over its lines. The shippers not interested in the division of the through rate as between carriers. (1370) A railroad would, however, get more business if it solicited it. Some of the lines feeding the S. P. mentioned.

Morgan line not used for coast business.

(1371) DENNIS CROWLEY.

Crowley.

Salesman for Carnegie Steel Company. Formerly stenographer, and part of the time solicitor of the S. P. Occupied the latter position for about five years prior to the amalgamation. The preferred route was the Sunset route via New Orleans. It moved over the different lines leading out of Pittsburg, some of it via St. Louis; not a great deal. Illinois Central. Didn't solicit any traffic for the Morgan line. The U. P. was represented separately. (1372) U. P. solicited business via Ogden. Witness doesn't remember having secured any Portland business. Had nothing to do with the passenger business.

Former solicitor for S. P.

(1373) Method of solicitation described. Witness solicited Oriental traffic. Sent it by way of San Francisco, via the Sunset as the preferred route. Over the Ogden route the S. P. got a haul of about 850 miles to San Francisco. (1374) Traffic controlled by solicitation of various eastern lines, naming them, would, as a rule, pass over S. P. They are all actively soliciting at Pitts-

burg. Some of these lines named could take the traffic to Omaha and deliver it to the U. P., so they are soliciting for the U. P., as well as the S. P. (1375) They could, however, carry it to Denver and deliver it to the D. & R. G. The U. P. is an intermediate carrier as regards the rate-making power. (1376) Would not consider it as good policy for the lines that reach Omaha to turn business over to competitors who go all the way from Chicago out to Denver. The U. P. at Omaha would be a preferable connection. Atlantic seaboard business moves to California by way of Cape Horn, also by Panama, the Tehuantepec route, the Morgan line.

U. P. is an intermediate carrier as regards rate-making power.

(1377) Witness thought the U. P.'s route to San Francisco through Portland would be relatively as desirable as the long routes mentioned from coast to coast. The Cape Horn, Panama and Tehuantepec routes get business because they make low rates, and they can make these rates as they please, without much opportunity on the part of S. P. to retaliate. Has never known of any substantial shipments to California through Portland. (1378) Although the S. P. Co. controls the Pacific Mail, which forms a part of the Panama route, witness stated that his experience was, the steamer lines always seemed to be able to make whatever rates they pleased. Witness is not familiar with the fact that a large part of the Panama business up the Pacific coast is carried by tramp steamers. (1379) The S. P. does not control the ships around Cape Horn nor the Tehuantepec route.

Never known of any substantial shipments going via Portland.

Woodside.

(1379) S. P. WOODSIDE.

Ben Avon, Pa. Traffic business.

Lives Ben Avon, Pa. Since July, 1907, general freight agent of the West Side Belt and the Wabash-Pittsburg Terminal Railroads. Prior to that for five years traffic manager of the Pittsburg Coal Company, the River Coal Company, and allied interests; and prior to that for fifteen years General Agent of the Erie Railroad in Pittsburg. Left the Erie in July, 1902. (1380) Prior to 1901 the soliciting agents of the S. P. and U. P. competed at Pittsburg for coast business. Thinks there was competition also for Colorado and Utah points. Occasionally had a car of coast business by way of the Morgan line. Erie got part of the traffic that went via New Orleans. Took it to Cincinnati or Louisville. U. P. business Erie carried to Chicago or East St. Louis, whichever way it was routed. S. P. agent tried to route business by New Orleans.

(1381) Cannot state positively that any cars went from Pittsburg via the Morgan line. Knew a few that went from Rankin, east of Pittsburg. The Erie was known as a neutral line, and always respected routing, taking it either through Cincinnati or Chicago. In a large majority of cases the traffic came to the Erie routed. Didn't understand that the Erie line to Chicago competed with the line to Cincinnati. (1382) Witness then did substantially what the joint agent of the S. P. and U. P. does now, took it by the long haul where he could get it. The Erie had two strings to the same bow, and witness had no preference. Every-

Erie line to Chicago did not compete with its line to Cincinnati. It had two strings to its bow.

thing that went over the U. P. went over the S. P., so that the S. P. had several strings to its bow. There are a great many eastern lines actively soliciting California business in Pittsburg, each trying to get the longest haul and the most revenue. (1383) It is about 1,000 or 1,100 miles from Pittsburg to New Orleans. Shippers are not interested in the division of through rates.

S. P. had several strings to its bow.

(1383) J. H. BLACKBURN.

Blackburn.

Lives at Salem, Ohio. Purchasing agent of the W. H. Mullins Company, at Salem, Ohio. They manufacture architectural sheet metal work, pressed steel bolts, fireproof windows. (1384) The factory at Salem is 70 miles from Pittsburg. Does not ship much to the Pacific coast, but have had some shipments. Prior to the consolidation, the S. P. solicited by New Orleans. Business that formerly went by New Orleans now goes by the all-rail lines. Some of it still goes by New Orleans; goes by all the lines, by the Santa Fe, and through Denver. Portland business goes by the Great Northern and Northern Pacific. None by the U. P.

Salem, Ohio. With W. H. Mullins Co.

(1385) Oriental business moves by New York. Witness had some Pacific coast business, but the great majority of it sent by New Orleans was for Mexico. What witness shipped to the coast was for lower or Southern California. Comparatively few went to San Francisco, and shipments for San Francisco usually went by direct railroad. All the lines between Pittsburg and New Orleans, the Missouri River and the Rocky Mountains, have solicited his business right along. (1386) Testimony with reference to competition for business between the New Orleans and the U. P. route had reference to coast business.

(1386) J. S. MURRAY.

J. S. Murray.

For about five years employed by the Aluminum Company of America. Not previously in the traffic business. That Company has plants at New Kensington, Pa.; Niagara Falls, N. Y.; Massena Springs, N. Y.; East St. Louis; Bauxite, Arkansas; Cave Spring, Ga. Most of the Pacific coast business moves from Massena, N. Y. (1387) over the New York Central to Chicago, and thence over the various lines, such as the Atchison, the lines to Omaha, the U. P., S. P., San Pedro. Portland business moves over the N. P. and G. N. Business to the Pacific coast also moves by the Morgan line. The consignee usually determines the routing. Has made shipments into Colorado common points via the Morgan line into Galveston and thence up to Colorado. Mr. Herring makes no distinction between the lines of the S. P. and U. P. in soliciting. Shipments to Colorado common points were made since 1901. Has no knowledge of shipments prior to that. (1388) Various eastern lines solicit witness' freight, and all these different routes are open to witness, who is not interested in the division of the rates by the railroads.

With Aluminum Co.

R. H. Thomson.

(1388) R. H. THOMSON.

Crafton, Pa. With Oil Well Supply Co.

Lives at Crafton, Pa., Traffic manager for about nine years, of the Oil Well Supply Company at Crafton, Pa. For about two years prior to that employed by the Chamber of Commerce, and prior to that commercial agent at Pittsburg of the Vandalia, a part of the Pennsylvania system, running from Indianapolis to St. Louis. For two or three years was also joint agent of the Illinois Central with the Vandalia. The Illinois Central pulled away, and put in an office of their own. (1389) The Oil Well Supply Company is the largest concern of the kind in the world. Ships their products wherever there is any gas or oil; all over the world. Have eight branches in California, from which distributions are made. Shipments also go direct to customers. Branches located at San Francisco, Orcutt, Bakersfield, McKittrick, Los Angeles and Maricopa. The latter is in California. Witness thinks its old name was Monarch. Shipments made from the boiler plant at Oswego, N. Y., go by way of Chicago, and if destined for Los Angeles usually move via El Paso, sometimes via the U. P., Salt Lake, and the S. P. They used to go by the Atchison, but not now. When going to San Francisco, they move by the S. P.'s long haul by way of El Paso, and at other times by way of Salt Lake and Ogden—the U. P.

Branches.

(1390) Atchison does not get any to Los Angeles, but does to Bakersfield. Warehouse located locally on their tracks there. Until a year ago, witness gave the Santa Fe all the Los Angeles business, but now it goes to the S. P. on account of his warehouse being located on the latter's tracks. The location at Los Angeles has been changed from the Atchison to the S. P., at the manufacturing company's own suggestions. During the period of congestion, something like a year ago, a great deal of material went there by the San Pedro, because it made better time. Would never send anything by way of New York and water, unless especially requested by the customer. Goods are very apt to be damaged in shipping by water. The all-rail routes are the best.

Liability to damage goods by water.

(1391) Have shipped some by the Morgan line at customer's request, with the distinct understanding that they would stand all loss or damage. The location of the tracks at destination largely governs the distribution of witness' business; also the question of reciprocity. Because of the S. P. purchases, some shipments were made by New York. It was a direct shipment to the consignee, not to witness' warehouse. (1392) These shipments, however, move from the Seaboard territory, and not from Pittsburg. The rates by the Morgan line are just the same as by the all-rail lines. Have shipped goods by way of New Orleans all-rail from Reading Mills, and from Pittsburg. Not as much as we used to, however. They don't make good time across the River there. (1393) Ships Oriental business by New York and the Suez. Shipments sold to the S. P. and carried by the Morgan lines originating at Reading, Pa.

Routing of his business.

(1394) Reading is less than 200 miles from New York. To reach the S. P. all-rail it would have gone fully 1,500 miles to the nearest point, namely, New Orleans, and approximately 1,500 miles also to have reached the U. P. All the lines reaching witness' plants actively solicit the business, and he is not interested in the division of rates between the carriers. Interested in good service. (1395) Soliciting agent is very useful in keeping shippers informed as to congestion, so that they may avoid it in making shipments. Mr. Herring solicits just as strongly for both lines as he used to, and gives just as good service.

Service just as good as formerly.

(1396) He still asks for business via New Orleans. Sometimes he asks for business by the U. P., and sometimes by the S. P. He does not try at the same time to get it for both the S. P. and the New Orleans routes. Witness has, however, the choice of all the lines that Herring represents, and doesn't care which one he solicits for. The Ogden route gives about as good service as any of the lines to the coast. (1397) Except sometimes when there is a congestion, and then witness uses other routes. When the other lines are congested, he uses that route. He is glad there is more than one. As far as witness can see, there is no harm in not operating the roads independently.

(1397) E. L. McGREW.

McGrew.

Lives at Crofton, Pa. (1397-8) Since April, 1900, Purchasing Agent and Traffic Manager of the Standard Underground Cable Company, with factories at Pittsburg, Perth Amboy and Oakland, Cal. Goods are shipped to Oakland and completed there; also manufactured there. The Company is one of the three large concerns of the kind. There are other minor companies. Going back to 1900, in the early days we sent stuff to the coast via the Atchison and the New Orleans gateway principally. That was up to four or five years ago, or a little longer, perhaps. It is now pretty equally divided between the Atchison and the S. P. Witness gives the S. P. (U. P.?) its proportion, divides it up pretty equally among the lines centering at Ogden—the U. P., Colorado Midland, D. & R. G.

Crafton, Pa. With Standard Underground Cable Co.

Routing of his business.

(1399) Probably the U. P. gets the largest proportion. Stopped sending all-rail by New Orleans five or six years ago. Mr. Herring wanted to send by Ogden, witness thought. Shipments from Perth Amboy all go to the Pacific coast by all-rail. Usually by the U. P. Some of the less than carload shipments go by the Morgan line, but witness does not have many. Most of the coast business is distributed from the Oakland factory. Use the Morgan line generally for Texas business. (1400) Witness thought Mr. Herring would rather have shipments go by Omaha. (1401) Witness is sure Mr. Herring knows witness prefers the Omaha route. Mr. Herring would take it either way. Before the consolidation, when Mr. Herring could not get a shipment by way of New Orleans, he would try to get it by Ogden. (1402) The Omaha and Ogden route does not give the Harriman lines a longer haul than the Sunset route by New Orleans.

Morgan line for Texas business.

Before consolidation when Mr. Herring could not get business via New Orleans he would try to get it via Ogden.

Depuey.

(1402) S. B. DEPUEY.

Munhall, Pa. With Conduit Co.

Lives at Munhall, Pa. For two years traffic manager of the Safety Armorite Conduit Company, which is the largest concern of the kind in the country. It manufactures steel conduits for electric wiring. Shipments for California go S. P. via El Paso, Atchison and U. P. (1403) Mr. Herring expresses no preference as between the U. P. and El Paso routes. Portland business goes by the Northern lines. Only knows of one car going to Portland over the U. P. and Short Line. That was routed by the consignee. The routing always comes in from the consignee with the order, and the soliciting agents of the various lines come in every time to check the order up. That is one of the functions of the commercial agents.

(1404) W. G. HARD.

Lives at Salem, Ohio. Testimony immaterial.

Henderson.

(1405) JAMES A. HENDERSON.

Pittsburg. Pres't of Packet Line.

Lives at Pittsburg, Pa. President and General Manager of the Pittsburg & Cincinnati Packet Line, which handles freight and passengers between Pittsburg and Cincinnati. (1406) Connected with the line for 25 years, which has been in operation during that time, except when there is low water or ice. The River is usually open eight months in the year. Witness was always interested in the Pacific coast rate. At Cincinnati and other points the railroad would take it up, and make a through rate. The rates were so adjusted that shipments could go by the Packet Line to Cincinnati, and then on to the coast. Formerly had a pro-rate on that business, which was taken out about 1900 or 1901. While the pro-rate was in existence, handled coast business out of Pittsburg. One shipment by the Northern Pacific to Portland. Doesn't recollect any to the Pacific coast by New Orleans. Had business to Colorado points by New Orleans over the S. P.

Operates on Ohio River.

(1407) About 1900 the railroads refused to pro-rate with the River lines. There was a considerable amount of coast business moved out of Pittsburg by the boat lines while the pro-rate was in existence. Never knew of but one shipment to go to Colorado points via New Orleans, and that was a shipment of wire nails. Recalls it because of the peculiarity of the route. Went from Salem to East Liverpool, to Cincinnati, and to New Orleans by boat, and there turned over to the S. P. Cannot recall any freight going by New Orleans to California points. (1408) Never had any shipments to California. Has handled with the railroads that tap the Ohio and Mississippi Rivers for almost every western point, but does not recall any shipment to California. Witness' line never had any published rates to California. Never quoted a rate to California.

CINCINNATI, FEBRUARY 9, 1909.

(1409) STEPHEN GANO.

Gano.

Cincinnati. Freight solicitor, formerly with U. P.

Lives at Cincinnati, Ohio. Since November, 1896, freight solicitor G. R. & I. Railroad, a branch of the Pennsylvania. Previously, for nearly two years, with the Addyston Pipe & Steel Company, and prior to that with the U. P. as a clerk. The last two years being city freight solicitor. (1410) Left the U. P. in 1894. Mr. Welsh was then its representative. He was succeeded by Mr. Connor. At the time Mr. Welsh represented the U. P., Mr. Connor represented the S. P. The latter now represents both. The two roads competed for business to all Pacific coast points as far north as Puget Sound points, while witness was employed by the U. P. The S. P. worked trans-continental business via New Orleans and El Paso. The U. P. through Missouri River, Council Bluffs, Kansas City, Omaha, and Ogden.

(1411) The S. P. for Portland business had two routes. They had a steamship route from San Francisco to Portland, and they had an all-rail route from Sacramento to Portland, called the Shasta line. To reach the latter, business moved via New Orleans. The Shasta route in winter time was sometimes out of business on account of snow. Witness thinks the S. P. had the steamship route, not the Navigation Co., but is not sure. The U. P. worked Portland business by the Nav. Co. There was very active competition for passenger business to the coast. Active personal solicitation for this business. (1412) S. P. tried to send their business by New Orleans. Describes names and signs on Harriman lines' joint office at Cincinnati. (1413) S. P. business to Puget Sound points from the east went either by boat from San Francisco or by rail from Sacramento. U. P. worked Puget Sound points via Nav. Co. Steamers run from Portland and Seattle to points on Puget Sound.

S. P. would solicit via Ogden when it could not be obtained via New Orleans.

(1414) Describes geographical extent of Harriman lines. The S. P. would sometimes solicit freight via the Ogden route, when they could not get it via New Orleans. (1415) It preferred the Sunset route on account of the revenue, but if they could not get it, they would use the Ogden route. They got a greater percentage of the rate via New Orleans. The U. P. reached the coast only in connection with the S. P. and there was competition between the Ogden route and the Sunset route. (1416) The Ogden line was competing against the Atchison. The various lines extending from Cincinnati westward, and also south and southwestwardly, were and are competing for the coast traffic. Various lines mentioned.

(1417-1418) Various coast routes discussed. (1418) Many of the eastern lines would not exchange with the Atchison, but preferred the S. P. because they would get the long haul by the latter interchange. Would not interchange with the Atchison, because they were competitive with them out of Chicago. (1419) The shipper can send either by New Orleans or El Paso, or any of the routes. That has been true both before and since 1901. Solicitor's duties

described. Thinks the S. P. had a line of steamers from San Francisco to Portland. Knows of a line of steamers, but doesn't know who controls them. Thinks they were operated in connection with the S. P., but has no personal knowledge about it.

(1420) The U. P. worked business for Portland and Puget Sound over the Short Line and Nav. Co., and from Portland to Puget Sound by water. Doesn't know whether business was interchanged with the N. P. to Puget Sound, or not. Passenger traffic moved to San Francisco via Portland—by boat, if the passenger wanted to go that way. Never attempted to move freight via Portland. Doesn't think that route was ever used for freight, except in case of an emergency. U. P. worked all California business by way of Ogden. (1421) Passenger rates to the Pacific coast and return were made up to accommodate the passenger, by any route he wanted to travel. (1422) In the winter time, the S. P. would call the U. P. a "snow route," and in the summer time the U. P. would call attention to sand blasts and sand storms, in the south. Both had folders calling attention to the beauty of their line, and newspaper and magazine advertisements. Solicitors also attempted to secure passengers for their respective lines. N. P. actively competed for business into Portland.

U. P. worked all California business via Ogden.

(1423) Doesn't remember about the G. N. Thinks the Canadian Pacific had a representative at Cincinnati. (1424) Remembers the time when the S. P. business for Portland was sent from San Francisco by boat, because the Shasta route was troubled with snow. No matter which way the coast business goes, the S. P. gets some of it, unless it goes via the Atchison. (1425) The S. P.'s line from Ogden to San Francisco is not a competing, but a connecting line. The passenger advertisements of both the Ogden and Sunset routes are now gotten up very expensively. The blockade by snow of the Shasta route occurred certainly more than fifteen years ago. San Pedro route has been built since witness left the U. P.

S. P. line from Ogden not a competing but a connecting line.

Williamson.

(1426) E. E. WILLIAMSON.

Cincinnati. Traffic business.

Lives at Cincinnati, Ohio. For five years Commissioner of the Receivers' and Shippers' Association, at Cincinnati. Previously traffic manager of the Macon, Dublin & Savannah road, at Macon, Ga., for two and a half years, and prior to that connected with the Traffic Department of the Cincinnati, New Orleans & Texas Pacific Railway Company, or the Queen & Crescent route. Entered the employ of the Company last named in 1886, and left in 1901. Was rate clerk, correspondence clerk, and finally chief clerk of the Traffic Department at Cincinnati. Would say that prior to 1901, the U. P. and S. P. competed for business out of the Cincinnati territory to the Pacific coast. S. P. endeavored to route traffic via New Orleans. The Q. & C. participated in that business to New Orleans. So far as the business that moved over the Q. & C. was concerned, very little of it moved further north than San Francisco.

Witness occasionally handled a Tacoma or a Portland shipment, but there was not much of that.

(1427) Occasionally some went as far north as Puget Sound —Seattle. As a Q. & C. man, witness would say competition was very active between the Ogden and Sunset routes, because freight going by the former would not move over the Q. & C. at all. Names Cincinnati agents of the U. P. and S. P. (1428) Method of solicitation described. The Atchison and N. P. and the G. N. had representatives at Cincinnati. Witness in working for the Q. & C. worked exclusively with the S. P. The chief competitor was the route of which the S. P. formed a link. The S. P. formed a part of that route, but the latter's agents worked all the business they could by New Orleans.

Cincinnati traffic.

(1429) Only one set of solicitors since the consolidation, for the U. P. and S. P. The Q. & C. is a short rail line between Cincinnati and New Orleans. It is about 827 miles. (1430) The route by New Orleans is much longer than by Ogden. Some distances named. All the lines were competing for the Cincinnati business. The L. & N. and Illinois Central competed with the Q. & C. to New Orleans. (1431) Some of the other lines mentioned. The Q. & C. and S. P. Sunset line competed against the U. P. and S. P.'s Ogden line. The Atchison was also competing. (1432) Witness never knew of any freight being sent to California terminals over U. P. to Portland and then down by boat. (1433) Various lines competing for California business mentioned.

New Orleans route much longer than Ogden route.

Never knew of use of Portland route to California.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME IV.

Buchanan.

(1434) R. P. BUCHANAN.

Cincinnati. With Proctor and Gamble.

Lives at Cincinnati, Ohio. For nine years manager of the freight department of Proctor & Gamble, at Cincinnati, soap manufacturers (among others, "Ivory Soap"), established in 1837. Previously assistant general freight agent of the Big Four Railroad; for seven years, as assistant general freight agent at Cincinnati; and two years on the Michigan Division, with headquarters at Benton Harbor; two years prior to that as general agent of the Big Four. Proctor & Gamble have established plants at Cincinnati, Kansas City, and New York. Since the establishment of the Kansas City plant four years ago, almost all the Pacific coast shipments move from there. (1435) Agents of the U. P. and S. P. named. Prior to 1901 the two companies competed for Pacific coast business. The U. P. routed via Ogden, and the S. P. via New Orleans; also via El Paso.

Routing of business.

(1436) The preference of the Big Four in routing coast business was via Chicago or St. Louis, or Peoria, in connection with the U. P. or Atchison. They could take business via New Orleans, but it was not a preferred route. They took it to New Orleans via Cairo and the Illinois Central, or by the Mobile & Ohio. They didn't solicit New Orleans business. California business of Proctor & Gamble moves via the U. P. or Atchison. None of it moves via El Paso. Before the Kansas City plant was established, a good deal of witness' business moved through New Orleans. The balance went U. P. or Atchison. Referring hereafter to the time prior to the establishment of the Kansas City plant, business to Portland and Puget Sound points moved by the northern gateways, the G. N. principally, or the N. P. (1437) Never shipped much to Portland over the U. P. Mostly over the St. Paul. Doesn't think the joint agent of the two lines discriminates as between the two routes in

routing business to California points. His solicitation is more especially against the Atchison.

(1438) There were several reasons for witness' shipping via New Orleans. Might want to give it to some of the initial carriers, as it gave them the longest haul that way, or might want to give it to the S. P., as that gave the latter the longest haul. All the lines extending westwardly were actively soliciting for California business. (1439) The Big Four runs like three fingers of your hand, from Cincinnati to Chicago, to Peoria, to St. Louis. By competition witness meant that practically all lines, even though running in opposite directions in Cincinnati territory, were competing for Pacific coast business.

Portland-San Francisco route not used.

(1440) Various competing roads mentioned. Witness never knew of any business from his territory for points on the Pacific coast south of Portland being routed over U. P. by way of Portland and then by boat down coast. Mr. Connor, if he gave his undivided attention to the New Orleans route, would be able to get a considerable amount of business for his line, but at present he is not discriminating as between the two routes. "He knows that we are going to route the business as we see fit, any how, and he is glad enough to get it." (1441) Lately we have shipped to the coast from the New York plant and that business moves by the Panama route. Doesn't recall sending anything by the Morgan line. So far as witness' business is concerned, Mr. Connor has represented both the S. P. and U. P. efficiently. (1442) Wouldn't like to say that it would be more important to have separate representation all the way up, for both the U. P. and S. P. U. P. couldn't make a rate to California without the concurrence of the S. P., under the Interstate Commerce Law. Shipper not interested in divisions. Trans-continental rates on soap and cottonseed oil are higher now than they were several years ago.

Uses Panama route.

Not opposed to reasonable advance in rates.

(1443) Proctor and Gamble not opposed to a reasonable advance on the part of the railroads. The joint agent is no longer a factor in competing for business for the New Orleans route as against the Ogden route. Didn't think it would be as well for the shippers, if all the trans-continental lines from the Missouri River to the coast had one set of officers and representatives. Doesn't know he would like to have it that way, but, if it had to be, there is no man he would prefer to Mr. Stubbs. (1444) There is a difference between the U. P. and S. P. and other competing trans-continental lines, in that both the former compose part of the same route. (1445) Thinks he would prefer entirely separate management for the two companies, because the shipper would probably get more liberal rate legislation. Perhaps this would be less true of the U. P. and S. P. than of other systems, because the S. P. forms a part of both trans-continental routes.

U. P. and S. P. jointly compose through line.

(1446) Desirability of having separate organizations, and its effect on the shipper, discussed. Witness said that it was somewhat theoretical with him, but he could not help but feel a separate

organization was more desirable for the shipper. (1448) Trans-continental lines all maintain the same rates from Cincinnati to the coast. (1449) Witness would think that the boat line from Portland to San Francisco would give the U. P. a greater voice in the adjustment of through rates to California than it would possess if its line stopped at Ogden. The fact that the G. N. and N. P. has a line of steamers to San Francisco, might have an influence in the adjustment of through rates from the east to California. The existence of the Panama route would have an influence on trans-continental rates.

S. P. has a decided influence in determining the through rate.

(1450) The fact that the U. P. has a through line and that there is a boat line, and that the northern lines have a through line, and that the Atchison goes through to the coast, (1451) renders it impossible for any one road to dictate what the rate shall be. The S. P. has a decided influence in determining the through rate, owing to the fact that it forms a part of both lines. Witness not prepared to say whether or not it has a controlling influence. U. P. cannot put in a through rate to California initially, without the concurrence of the S. P. (1452) Nor can it reduce its division without the consent of the S. P., either voluntarily or otherwise. If the U. P. reduced its division, and applied to the Interstate Commerce Commission for a reduced through rate, the S. P. would at once increase its own proportion of the through rate or cancel it altogether. Knows of no reason why the D. & R. G. couldn't attempt that practice, as well as the U. P. Would think if it were a practical proposition, any connection that had been discriminated against, as the D. & R. G. has been, would probably resort to it. In making the trans-continental rates, the U. P. has no more power than any other intermediate carrier.

(1453) The fact that the U. P. is a strong system gives it more power than the D. & R. G. Thinks the Rock Island would be in a better position than the D. & R. G. (1454) Witness thought that the U. P. would have a more important voice in trans-continental rates than even the Burlington, stretching from Chicago to Denver, because the U. P. reaches from the Missouri River, with all the more important connections there, clear through to Ogden. The U. P. to Ogden is all one road, one management, while the Burlington and D. & R. G. to Ogden are two roads. Witness' personal opinion is that one road is a more important influence than two. Witness cannot conceive of any conditions under which U. P. would have any voice in making rates to California without the consent of the S. P. (1455) Any traffic carried by the U. P. would have to go over the S. P. to get to the coast.

Keavy.

(1455) JOSEPH KEAVY.

Indianapolis. Formerly in railroad service.

Lives at Indianapolis, Ind. Since June, 1906, Commissioner of the Indianapolis Freight Bureau; previously in the railroad service. Details stated. (1456) Prior to 1901 there was competition between the S. P. and U. P. routes. The S. P. agent endeavored

to route via New Orleans, and the U. P. by the Missouri River gateway, Kansas City, Omaha, and St. Joe. Could not testify as to any specific incidents or grounds giving witness knowledge as to whether competition ceased after the consolidation, other than the general impression that the reorganization and joint agency necessarily tended to lessen the aggressiveness of the separate representation which existed before. Its tendency would be to eliminate any actual competition. Prior to the amalgamation, the solicitation of the two routes was quite pronounced and active.

Factors of competition.

(1457) The factors of competition stated, namely, the kind of service rendered, etc. Car supply one of these factors. Some features of car supply largely in the hands of initial roads. (1458) Business for Portland would necessarily move by the U. P. or the northern routes in preference to the long route through New Orleans. Does not know whether any moved by Ogden and Sacramento, or not. Observed the competition between the representatives of the S. P. and U. P. in Indiana. Was then in charge of the Michigan Division of the Big Four, running from Benton Harbor down to Louisville. It was immaterial to witness' road which way the freight was routed, whether by Ogden or New Orleans. (1459-1460) Various lines were soliciting the traffic by way of New Orleans. Various other routes soliciting against the lines leading to New Orleans described. (1461) Doesn't remember the time that the Canadian Pacific had a differential from California by boat line from Vancouver. Has no knowledge as to any traffic moving that way to California.

(1461) JOSEPH G. McDOWELL.

McDowell.

Indianapolis. With Atlas Engine Works.

Lives at Indianapolis, Ind. For about thirty years traffic manager for the Atlas Engine Works at Indianapolis. (1462) Has made considerable shipments to the Pacific coast. California points are principally Los Angeles and San Francisco. Ships to agents, not to jobbers. Usually routing controlled by the point of shipment. Sometimes agents requested special routing. Prior to the consolidation, the U. P. and S. P. had separate agencies, the former soliciting by Missouri River gateways, and the latter by New Orleans, or sometimes El Paso.

(1463) Ships to Portland over the U. P., G. N. and N. P. That business is largely controlled by the consignees. Cannot recall that the joint agent of the two companies expressed any preference between those companies. They solicit, however, against other routes. Bulk of witness' business moves via New Orleans, (1464) because most of his business in California is with Los Angeles, and that is the natural route. The only outlet for the U. P. by way of Ogden is the S. P. All the westbound and southerly lines solicited witness' business. Some of these lines named. (1465) Thinks it would be true to say that not only the U. P. and S. P., but all the lines, have been less active in solicitation in his territory in recent years.

All lines solicit less actively in recent years.

(1465) CHARLES S. BARKER.

Traffic manager E. C. Atkins & Company, saw manufacturers, at Indianapolis. (1466) Doesn't think the representatives of the U. P. and S. P. express any preference for either of their routes over the other.

Bean.

(1466) H. H. BEAN.

Springfield, Ohio. Farm machinery.

A manufacturer of farm machinery at Springfield, Ohio. For 33 years with the Thomas Mfg. Co. (1467) Before the consolidation, S. P. attempted to route freight by New Orleans, and the U. P. through the Missouri River gateways. The competition was quite aggressive. (1468) Now the solicitor expresses no preference as to the two routes. Solicitation described. Solicitors are undoubtedly important for getting business for railroad. (1469) Formerly shipped by New Orleans, but not much of late. Cannot recall that he has been importuned to ship much either way of late, but was before the consolidation. Formerly aimed to divide business between all the lines. His coast business is to a certain extent routed by the consignee. Where left to him, Portland business would be shipped by the N. P. chiefly, also the G. N. and U. P. All these lines solicit Portland business.

(1470) Doesn't recall ever shipping to Portland by way of New Orleans. Since consolidation, has been solicited by Mr. Connor's assistants. Routes by New Orleans and El Paso still open. All buiness south of Portland prior to the contruction of the San Pedro, had to go over the S. P. (1471) Doesn't recall whether S. P. attempted to solicit Portland business via the Shasta route.

Mayer.

(1471) S. D. MAYER.

Hamilton, Ohio. Mosler Safe Co.

Lives at Hamilton, Ohio. Since 1889, Asst. Treasurer and office manager of the Mosler Safe Company, for two years at Cincinnati, and subsequently, in 1891, at Hamilton, Ohio. Prior to 1895 the Company had a traffic manager, but when he stepped out, it was thrown on witness. (1472) One of the two largest safe companies in America. Ships all over the U. S., including the Pacific coast; also ships largely to Mexico, and some little to London and Canada.

(1473) Prior to the consolidation, the S. P. solicited business by New Orleans, and the U. P. by the Missouri River gateways. Competition was very active. Other lines also solicited. Since the consolidation, joint representative has solicited witness, and in one or two instances has expressed a preference for shipments via New Orleans. Prior to consolidation, witness shipped little by the southern gateway. Shipped nothing that way, unless it was routed by the consignee. Most of the business goes to the coast through the Missouri River gateway. (1474) Ships to Portland by the G. N. at the present time. Formerly shipped by the U. P., and often by the N. P., but principally the former. Witness actively solicited by representatives of all the lines for California business. (1475) Some of these lines named. Never attempted to ship to

Never shipped via Portland route.

California by way of Portland. Has never shipped anything by water in this country.

(1476) PAUL NICHOLS.

Testimony immaterial. (1477) Complainant's Exhibit 115, business card of W. H. Connor, General Agent, Harriman Lines, at Cincinnati. Complainant's Exhibit 116, business card of Lyon Liston, Traveling Freight Agent of Harriman Lines, at Cincinnati, on the reverse side of which is a map of the system.

(1478) HARRY C. SMITH.

Smith.

Cincinnati. Formerly with U. P.

Lives at Cincinnati, Ohio. In the factory supply business at Cincinnati for four and a half years. After holding minor positions with other railroads for about twelve years, entered the employ of the U. P. in 1884, and continued with them until about 1900. (1479) Was dropped on the consolidation of the U. P. and S. P. Then employed by the Big Four in Chicago, as traveling freight agent. Then was sent back to Cincinnati to open up the office of the Lake Shore, Lehigh Valley Fast Freight Route. Continued with them until he resigned to go into the manufacturing business. Was traveling freight and passenger agent while with the U. P. Was with them about sixteen years. Solicited Pacific coast business.

(1480) For trans-continental business there was competition between the U. P. and S. P. and also with the Atchison. The S. P. agency tried to move the traffic via New Orleans or El Paso. The U. P. by St. Louis, Kansas City, Chicago and Omaha. Competition between the U. P. and S. P. didn't extend as far north as Portland or Tacoma or Seattle. Business to Portland was competed for by the N. P. first, and the G. N. afterwards. S. P. worked for business by way of Ogden when they couldn't get it by the southern gateways. Competition was active between all the lines. (1481) Remembers distinctly one rate war before the Interstate Commerce Act was passed, when the U. P. had a rate to San Francisco of fifty cents per hundred on almost anything and everything it could take. The Sunset route participated in that war. Solicitation, when there are no cut rates, consists of a personal acquaintanceship with shippers.

S. P. worked for Ogden gateway when business could not be obtained via New Orleans.

(1482) S. P. advertised through tourist sleeping cars by New Orleans and Ogden. (1483) The S. P. Co.'s advertisements have continued much the same in recent years as they were before. Couldn't get business for the U. P. without sending it over the S. P.

S. P. advertisements the same.

(1484) In the rate war that witness spoke of, the U. P. and S. P. via Ogden were working together against the other lines, the Atchison and the N. P. Never solicited any business to San Francisco by way of Portland. Never knew any freight to move that way.

Portland route to California not availed of.

Blair.

(1484) J. L. BLAIR.

Hamilton, Ohio. With Niles Tool Works.

Secretary of the Niles Tool Works Company at Hamilton, Ohio. (1485) For about twelve years has had charge of its traffic. Prior to the amalgamation of the offices at Cincinnati, there was competition for Pacific coast business between the two. The S. P. agents attempted to route freight by New Orleans, and the U. P. by Omaha. Witness shipped both ways, and still tries to divide his traffic.

Routing of his business.

(1486) Doesn't recall shipping anything by New Orleans for a long time, although formerly he did. Joint solicitors express no preference as between the two routes. Business now goes principally by way of Omaha. The Atchison takes part of it. Portland business goes over the N. P. or G. N., not usually by the U. P. Thinks he made one shipment some years ago to California by the Canadian Pacific and down from Vancouver by boat. There was a differential of, witness thought, ten cents a hundred. Solicitors do the railroad a great deal of good, and do some good to the shippers. (1487) Business is solicited by a great many lines. Most of his business to the Pacific coast is to railroad shops, and is routed by the consignee. The more direct line is westerly as against New Orleans. (1488) Never knew of a shipment to go to California by way of Portland, nor to Portland by way of New Orleans or El Paso. Thought the Canadian Pacific differential was withdrawn as the result of arbitration. It is not in effect now.

Portland-San Francisco route not used.

CINCINNATI, FEB. 10, 1909, 10:30 A. M.

Gothlin.

(1490) A. P. GOTHLIN.

Columbus, Ohio. Former Traffic-Man.

Since August 1, 1908, a member of the Ohio Railroad Commission, residing at Columbus. There are three commissioners appointed by the Governor for a term of six years. Previously, from 1898 to 1906, was traffic manager of the National Cash Register Company, of Dayton. Prior to that, for nine years, he was general agent of the Wisconsin Central Railway at Cincinnati, and for the first four years of that time was general agent of that Company and the Northern Pacific. That was while the N. P. had a lease of the Wisconsin Central. (1491) From 1886 to 1889 was employed by the Wisconsin Central in Pittsburg, as general agent, freight department, and from 1883 to 1886 was traveling freight agent of the Chicago & Northwestern. Most of the Cash Register Company's Frisco business went by New Orleans.

Package car from Cincinnati.

(1492) Prior to 1901, the U. P. and S. P. competed for coast business. The S. P. agent solicited business by New Orleans, and the U. P. by Omaha or Kansas City. Got better service for less than carload freight, by New Orleans. For a large part of the time there was a package car from Cincinnati through to San Francisco that way. Also shipped by New Orleans because of

favors done the Company by Mr. Connor, the S. P. agent. Local representatives are very valuable to railroads in getting business. (1493) Solicitors of great value both to the railroad and the shippers. One function of the solicitor is to secure equipment. (1494) Favors which witness, as a solicitor, has rendered shippers.

Value of solicitors.

(1495) Favors done witness by Mr. Connor. Witness thought that after the consolidation, Mr. Connor always personally stuck to his first love, and preferred the Southern route. Mr. Liston, who was "supposed to represent the Union Pacific," always made it clear that if the business were already moving by the (1496) S. P., he didn't care to interfere, but if by the Atchison, he would like to have it by the U. P. About 1889 carried some wire from Pittsburg himself, by way of the Canadian Pacific to Vancouver, and then down the coast to San Francisco—a large shipment of some 30 or 40 cars. Witness thought there was then a small differential. Remembers active competition between the U. P. and S. P., and witness' own line, for the shipment of a lighthouse from Mount Vernon to Astoria, Oregon. Every western agent was after it, (1497) including the agents of all the intermediate lines. Remembers Ohio Bridge Company that shipped to a point in Oregon by the Louisville & Nashville and S. P. Witness thought the U. P. and all the other roads were after the shipment. Thinks the U. P., if it were a separate and distinct organization and had a vigorous management, could practically dictate to the Trans-continental Association any rate policy they might see fit to adhere to strictly, that is, they could at least be in a position not to be dictated to. Rates are made at meetings of the Trans-continental Association. (1498) The distance from Ogden or Granger to Portland over the Nav. Co. and the Short Line is about 800 miles, (1499) and from Portland to San Francisco about 777, while the distance from Ogden to San Francisco by the Central Pacific is about 850 miles.

Shipment of wire via Can. Pac.

U. P. with vigorous management could dictate.

(1500) Never knew the U. P. to try to use the Portland route for San Francisco, but doesn't see why that route could not be made as satisfactory as that by New Orleans. (1501) If the U. P. undertook to use the Portland route, the S. P. would divert its eastbound traffic to the D. & R. G. at Ogden. Thinks in a controversy of that kind, the S. P. would suffer the most. Experience of rate wars shows that the smaller line always hurts the larger line in a larger ratio. (1502) The U. P. could, if it saw fit to take drastic measures, arrange rates so that from this whole territory the New Orleans route would get scarcely anything. Hardly thinks any intermediate line would do that. No one of the other intermediate lines "would be as strong in a matter of that kind as the U. P. would with its two lines from Kansas City and Council Bluffs." Thinks the S. P. would suffer more, because it has more at stake. The larger line would not suffer more per mile of road, but more in the aggregate.

Never knew U. P. to use Portland-San Francisco route.

(1502-3) Witness thought the Interstate Commerce Commission would not permit the S. P. to cancel through route via Ogden

and U. P. Judge Lovett said they would not have power to prevent it, if there was another practicable route, namely, that by Portland. Witness replied that he did not wish to put his legal opinion against Judge Lovett's. Didn't know Supreme Court had decided that initial line had the right to route freight beyond its own line. Thought this applied only to fruit. (1504) Witness thought that as long as published tariff showed more than one combination of routes, shipper had the right to select any one of those routes, and his opinion upon the power of the U. P. to inflict more damage on the S. P. than the S. P. on it, is largely based on that understanding of the law, and also on the fact that he was thinking more of the westbound business than of the eastbound. Also thought that I. C. C. would prevent the S. P. from canceling its through rates with the U. P.

Little trans-continental business originates on U. P.

(1505) Very little trans-continental business originates on the U. P. They have six or seven connections at Kansas City and Council Bluffs, from which they take business, and witness thought they could take that business by way of Portland as against the S. P. at Ogden. They would have to use either the S. P. or Atchison to get into the interior, but witness thought the bulk of trans-continental business was to dealers at terminal points who ship back into the interior. Doesn't think the citrus fruit business could be handled by the U. P. via Portland. (1506) The bridge shipment to a point in Oregon, south of Portland, of which witness previously spoke, was a shipment to a local point on the S. P.

Juggling of rates.

(1507) The shipments that went around by Vancouver, of which witness testified, did not go because of the differential, but were shipped as a blind. The lines were accusing each other of having cut the rate, and the shipper was working the lines, one against the other. That is the only important shipment witness remembers that way, though the Wisconsin Central joined with the Canadian Pacific and put in oil rates to enable the independent oil men in Pennsylvania to get into Frisco. Doesn't know how much oil they carried. Thinks that was in 1887 or 1888. Doesn't know how long those rates stayed in. (1509) Doesn't know whether the package cars by way of New Orleans and the S. P. are still operated, or not. They were, up to the time witness left the Cash Register Company.

(1509) Never knew the S. P. to solicit California business by way of Ogden. They preferred the New Orleans route. (1510-1511) Various lines and routes soliciting business for California points discussed. (1511) The route to Portland and then by boat to San Francisco is many hundreds of miles shorter than by Vancouver to San Francisco. (1512) Any reduction in the rate made by the U. P. competition would reduce rates all along the line and, therefore, would reduce rates on all S. P. through business by New Orleans. From a part of this territory the distance via New Orleans is so much greater that the shrinkage would be felt a great deal more. It would reduce the rate per ton per mile so much more than by a

shorter line. U. P. actually competed with N. P. for Portland business when witness was connected with the N. P. Co.

(1513) The rates over the Sunset route and the Ogden route were always the same; also by the Atchison; so that competition existed in service and solicitation. The Sunset route is more even in time than the Ogden route. There were transfers via the Missouri River. The advantage in distance is greatly with the Ogden route. Doesn't recall whether there was any package car via Ogden. Thinks there was at times from Chicago. (1514) Package car via the Q. & C. was made up at Cincinnati.

Package car.

(1515) New Orleans route was undoubtedly aided by the fact that there were only two lines in interest from Cincinnati to San Francisco, with a through carriage arrangement, without transfer. Various lines mentioned as competitors for coast business out of Cincinnati. (1516) Witness thought the territory is now so thoroughly covered by connecting lines that the initial line has little to say on the subject of routing. It is true, however, that they have more to say about furnishing equipment. Witness thought that business was controlled by the fast freight lines, rather than by the Railroad Company. That is to say, if a shipper elects to give it to a particular fast freight line, he cannot change the routing after the initial line has got hold of it.

(1517) If the western lines found the initial lines working against them, they would influence the shipper against that initial line—retaliate. If the shipper was located at a non-competitive point, they would work against him at a competitive point. They would try to get even. Initial lines, witness' experience was, acted fairly, and let the western line get it if they could. They didn't attempt to interfere. Thought the initial line could exercise influence through furnishing equipment, but does not think that has been the practice. As a freight solicitor, witness' experience was that the initial lines were indifferent to routing. The solicitors of the western lines generally had discretion enough not to try to make the initial line give up the long haul. Sometimes the initial line gave up the long haul. (1518) It is quite a common thing for the Pacific coast representatives of the western lines to secure the routing of traffic from the east, and then to write their eastern representatives to go to the shippers and see that the routing was respected.

Initial lines indifferent to routing.

(1518) ABRAHAM RHEINSTROM.

Rheinstrom.

Engaged in the liquor, fruit and machinery business at Cincinnati. (1519) Has shipped fruit from California to Cincinnati in considerable quantities. Has also shipped his manufactured product to the Pacific coast since 1880 or 1881. Number of cars shipped, stated. Products moved to the coast in carloads, and some L. C. L. on account of discriminating rates against him. Car rates taken off and witness forced to make local shipments. Before the consolidation, the competition between the two roads

Cincinnati. Liquor, fruit and machinery business.

was pretty active. (1520) Now the solicitor makes no distinction between the S. P. route and the New Orleans route in soliciting business. About 1900 made shipments by Vancouver to California. At that time there was a cheaper rate by the Canadian Pacific. Shipped a number of carloads both ways.

Shipments via Can. Pac.

(1521) Witness preferred the Sunset route in the winter season, to keep his products from freezing. S. P. representative prior to the consolidation solicited via New Orleans, and the U. P. via Omaha. Since the consolidation, they have reduced the rate on fruit coming east from $1 to 75 cents, and they have advanced the return rates and taken away the benefits of carloads, and the valuation of the merchandise shipped. In shipping whiskies or liquor or alcohol, in order to have a reduced commodity rate, they lowered the valuation per gallon, sometimes 50 cents, and sometimes more, in order to get the reduced rate that in case of loss they would be called upon to pay, upon the valuation. Of course, as they had advanced the rates, they also raised the valuation of some of the liquors. The net result has been a tendency to increase the freight charges. They no longer make concessions as to carload shipments. At the present time, witness is not shipping anything.

Rate changes.

Ceased shipping.

(1522) Stopped over a year ago. Routing for westbound business came from witness' representative, sometimes via Omaha, and sometimes via New Orleans and El Paso. Sometimes by the Santa Fe. Doesn't recall having shipped by the Illinois Central and S. P. Usually shipped to Portland over the G. N. or N. P. Never shipped to Portland by way of the S. P. Changes in rates, classifications, etc., made in the last three years. Some changes were made prior to that where the roads advanced the rates and discriminated against liquor dealers on ordinary liquors and whiskey in favor of alcohol. These changes were made by all the lines. (1523) Witness' experience was that the Atchison hadn't much to say in bringing about the changes; that it was always the S. P. that controlled the rate situation.

S. P. controlled rate situation.

McGuffey.

(1524) WILLIAM H. McGUFFEY.

Milford, Ohio. Traffic-Man.

Lives at Milford, Ohio. For about four years in the Freight Dept. of the Proctor & Gamble Company, and prior to that for eight years in the Freight Traffic Dept. of the Queen & Crescent. The Q. & C. worked exclusively with the S. P. via New Orleans. Had no connection with the U. P. That line, and the Atchison were competitors of the S. P. (1525) Q. & C. worked very little in connection with the S. P. for business north of San Francisco. Obtained occasional shipments that way to Portland. S. P. solicited business via New Orleans. The joint agency expresses no preference as between the U. P. and S. P. Proctor and Gamble's Portland business now moves exclusively U. P. Ships to Puget Sound points by the G. N. and the N. P.

Joint agent impartial.

(1525) Method of solicitation discussed. (1527) After the combination, the Q. & C. continued to work exclusively for the

S. P. by way of New Orleans, and that gateway is still open. Other lines leading to New Orleans still work for that business. Witness' experience has been that the lines leading directly from Cincinnati do not solicit the coast business with anything like the activity that the western lines do. By the western lines witness meant the Santa Fe, U. P. and S. P. He didn't mean to include the Burlington or the Rock Island. (1528) The Burlington is not indifferent to coast business, but their solicitors talk more about Colorado business. The Rock Island doesn't work for the business as actively as the U. P. Never sent any via the Rock Island to El Paso. Knows there are divisions in effect that way.

New Orleans lines work for New Orleans gateway.

Western lines more active solicitors.

(1529) The reason for the difference in activity, witness thought, was because a great many years ago "the western lines" had their solicitors in Cincinnati, and they had given a good deal of the business they had secured to these intermediate lines, and witness thought there was some sort of understanding among them that the intermediate lines are not to be too active to try to get the business and divert it to their long hauls. Thinks the western lines would be interested in the selection of the route east of their lines.

(1530) Thinks they have traffic relations with the other lines, and have some preferences. Question of reciprocity. Cannot name a specific instance, but thinks he would know of a number of cases in which two lines have reciprocated in that way, in the absence of a common ownership. Thinks the Missouri Pacific solicits coast business a little more actively than some of the other roads. It solicits business by way of Denver in a majority of the cases, rather than by El Paso. (1531) The D. & R. G. has a solicitor in Cincinnati. Never knew of any shipments to California via Portland.

M. P. favors Denver route.

(1532) W. E. SHEWALTER.

Shewalter.

Lives at Springfield, Ohio. For nine or ten years in charge of the traffic of Mast, Foos & Company, manufacturers of windmills, lawn mowers, etc., at Springfield, Ohio. Prior to the amalgamation, the S. P. and U. P. solicitors competed at Springfield. (1533) The S. P. endeavored to route business via New Orleans and the U. P. via Omaha. Witness shipped both ways. Since the amalgamation, the joint representative expresses no preference as between the two routes. Ships to Portland partly by the U. P. and partly by the N. P. or the G. N. Never had any business move to Portland via New Orleans. All these gateways are still open, and the rates are the same. (1534) Before the amalgamation, S. P. sometimes solicited by way of El Paso. Cannot remember their ever soliciting by way of Ogden. Never made any shipments to California by way of Portland.

Springfield, Ohio. With Mast, Foos & Co.

Never uses New Orleans route to Portland, nor Portland route to California.

(1534) G. L. CORY.

Cory.

Lives at Springfield, Ohio. Since August, 1899, in charge of the James Leffel & Company's traffic department. Manufacturers of water wheels, steam engines, boilers, etc. (1535) Previously was employed in the local freight office of the D. T. & I. Railway,

Springfield, Ohio. Traffic-Man.

which was then known as the Ohio Southern. Prior to the amalgamation, the S. P. and U. P. agencies actively competed for coast business. The S. P. sought to route the business by New Orleans, and the U. P. by the Missouri River. Products are all sold f. o. b. cars at Springfield, and routed by the consignees. Shipments to Portland move over the U. P. and Nav. Co., also by the N. P. and G. N. Some of the Seattle business during the last few months especially, has been moving over the Can. P. Since the consolidation, the representatives express no preference as to the two routes.

Never shipped to San Francisco via Portland, nor to Portland via New Orleans.

(1536) Business shipped over the U. P. to California passed over the S. P. west of Ogden. Never shipped anything to Portland via New Orleans or El Paso. Never shipped to San Francisco by way of Portland. Not interested in the division of the through rate. Both now and formerly the various lines lying between Cincinnati and New Orleans and El Paso and Denver and the Missouri River solicited coast business. Before the amalgamation, the S. P. never solicited by way of Ogden.

Marshall.

(1537) F. L. MARSHALL.

Piqua, Ohio. With Pioneer Pole & Shaft Co.

Since 1903 traffic manager of the Pioneer Pole & Shaft Company, at Piqua, Ohio. For four years prior to that was in charge of the traffic department of the Buckeye Mfg. Co., at Anderson, Ind., engaged in the same business. The new company is a successor of the former. Does about half the entire business of the United States in that line. (1538) They have plants at Sidney, Piqua, Troy, Cincinnati, Akron, Ashtabula and Wellington, Ohio; at Muncie and Anderson, Indiana; and also at St. Louis and Memphis. Such shipments as they make to the Pacific coast originate chiefly at Anderson and Muncie, Ind., and at Piqua and Troy, Ohio.

Solicitation of S. P. and U. P.

Prior to the amalgamation, the S. P. endeavored to route business by New Orleans, and the U. P. by the Missouri River. Recalls one or two small shipments made around the Horn at the suggestion of the consignee.

(1539) Since the consolidation, the joint agent expresses no preference as between the two routes. Portland traffic is divided among the U. P., N. P. and G. N. Some of the various lines soliciting Pacific coast business from witness mentioned. (1540) If the agent of the Chicago & Northwestern got the business, it would be just the same to the U. P. as if its agent had secured it, because in either case the traffic would move over the U. P. line. Generally, if a shipment moves over the Chicago & Northwestern or the St. Paul, it would move over the U. P. and S. P. to the coast. Shippers are not interested in the divisions. (1541) Never shipped to Portland by the Sunset route. The route to San Francisco via Portland would be impracticable for witness. Knows the more competition there is between the lines, the more activity there would be to give good service. The U. P.-S. P. Ogden line is at least as good as any of the others.

Route to San Francisco via Portland impracticable.

(1542) H. P. BLUM.

Blum.

Formerly for five years, from September, 1903, traffic manager of the Globe-Wernicke Co., at Cincinnati. The joint agent never expressed any preference as between the two routes. Shipped to Portland by the U. P., G. N. and N. P. Shipped to the coast by the American & Hawaiian Steamship Co., and also by the Panama Railroad Steamship Company. Rail charges to New York were not absorbed, but the aggregate rate was lower. (1543) A large majority of shipments went all-rail. Shipments by water were small.

Formerly with Globe-Wernicke Co.

(1543) GEORGE W. VOSMER.

Vosmer.

Preceded the former witness, Mr. Blum, in charge of the traffic of the Globe-Wernicke Co. (1544) Was in charge of the traffic department for two years, and for two and a half years before that was rate and route clerk of the freight movement from the 8th Street plant. Agrees with the testimony already given by Blum. Before the consolidation, the U. P. and S. P. agents competed. The latter solicited by New Orleans. Portland business sent by the U. P., G. N. and N. P. Most all the California business went by New Orleans. It was routed by the consignee. Cannot recall ever sending any out by Ogden.

Formerly in charge of traffic of Globe-Wernicke Co.

(1545) After the consolidation, witness' impression is that the solicitors preferred the New Orleans route. That is the way he had always shipped, and he continued to do so. The joint solicitor tried to get business away from the Atchison. Never shipped business to Portland by the Sunset route, nor to San Francisco via Portland. Never knew of anybody shipping that way. Not interested in the division of through rates. Prior to the consolidation, never knew the S. P. agent to solicit business by Omaha.

Never shipped to Portland via Sunset, nor to San Francisco via Portland.

(1546) J. A. HEDGES.

Hedges.

Treasurer of the Peruna Company, at Columbus, Ohio, with supervision, since 1901, of the traffic department. Since the earthquake has shipped to San Francisco by rail. Formerly shipped principally around the Horn. Has also used the American-Hawaiian Line. From Columbus to San Francisco by the American-Hawaiian Line takes about 80 days. There was a differential in its favor. For a number of years kept a storage plant in San Francisco, making distributions from there. The Horn shipments were intended for this plant. Ordinary shipments on orders almost invariably went by rail. (1547) Business for California points moved principally over the U. P., and Portland business for the most part over the N. P. The S. P. and U. P. since 1901 have had no agents competing for business as between the two roads. The general agent is impartial. Witness has never shipped to Portland by the Sunset route, nor to California via Portland.

Columbus, Ohio. Peruna.

Routing of his business.

Never shipped to Portland via Sunset route nor to California via Portland route.

Doyle.

(1548) WILLIAM J. DOYLE.

Cincinnati. With J. A. Fay and Egan Co.

For sixteen years traffic manager of J. A. Fay and Egan Company, at Cincinnati, builders of woodworking machinery. One of the largest concerns in the world. Agents of the S. P. and U. P. named. The former endeavored to route traffic by New Orleans, and the latter by Omaha. (1549) Competition was very active. In the last five years has not done much business in Portland, but during that time has shipped over the U. P. and Short Line. The G. N. and N. P., however, got some. Has never shipped to San Francisco by way of Portland, by boat. Thinks at one time there was a blockade from Ogden, and cars were taken up to Portland and back to San Francisco, but is not sure. Traffic was then blocked both from Ogden and El Paso. Formerly Portland business went over the N. P. That was sometime ago, however. Sales are made f. o. b. Cincinnati, and shipments routed by consignees. Shipped to the Orient, but seldom by the Pacific coast. Shipments to Los Angeles moved by the Atchison.

Never shipped to San Francisco via Portland.

Car loads by bunching shipments.

(1550) Witness is a member of Pacific Machine Dealers' Association, which was formed by manufacturers of machinery, in order to get carload rates to Pacific coast, by bunching shipments. All the Los Angeles business goes Atchison, but not all the San Francisco business U. P. A lot of it goes Rock Island and El Paso. In fact, most of it goes that way. It was all routed at the other end. (1551) Never shipped to Portland by the Sunset route. A good many lines in Cincinnati territory soliciting business for California. The S. P., the U. P.'s only outlet to the coast.

(1552) The shipper is not interested in the divisions. Before the consolidation, S. P. always solicited by New Orleans. Since then, when they could not get business that way, they would endeavor to work the U. P. route. All witness' business for 10 or 12 years went by New Orleans until about four or five years ago. In fact, both the agents of his company route everything by New Orleans. That is witness' natural route. The few cars that were sent over the U. P., were in response to its solicitation.

Ships via New Orleans.

Kemper.

(1553) S. F. KEMPER.

Cincinnati. Hall Safe Co.

Secretary of the Hall Safe Company at Cincinnati. From 1897 up to two years ago, manager of its traffic. Never did much business with the U. P. and S. P., but prior to the consolidation the latter wanted business via New Orleans. (1554) Doesn't remember having been solicited by the U. P. Business goes to the coast over the Atchison, and has for a long time, and to Portland by the G. N., N. P. and Can. P. Doesn't remember ever shipping freight by the U. P. Oriental business goes by New York. Has had a little go through San Francisco, but doesn't remember by what line. Has had a few California shipments over the U. P. and S. P. recently. The earthquake shook the Santa Fe loose. After repairs were made, shipments over the Santa Fe were resumed. Never

Routing of his business.

shipped anything to Portland by the S. P., nor to San Francisco by way of Portland.

(1555) J. T. PURSEL.

Pursel.

For a little over three years in charge of the traffic of the Armleder Wagon Works at Cincinnati. Previously with Frank J. Enger Carriage Company. (1556) Agents of the U. P. and S. P. named. The two lines competed for Pacific coast business actively. S. P. preferred New Orleans route. Enger's business was divided between the two. Matter of equipment was very important, and business was diverted on account of one line being able to furnish equipment superior to that of the other. The U. P. was one of the first to have a large vehicle car. Since the consolidation, has been solicited by the joint agent. (1557) He expresses no preference between the two routes. Never shipped to Portland by the Sunset route, nor to San Francisco via Portland. Shipments over the U. P. went from Ogden over the S. P. Witness not interested in divisions.

Cincinnati. Wagons and carriages.

U. P. first to have large vehicle cars.

Never shipped to Portland via Sunset nor to San Francisco via Portland.

(1557) CHARLES BERNDT.

Berndt.

Lives at Cincinnati, Ohio. Traffic manager of the Andrew Jergens Company. Employed by them 23 years. (1558) Traffic to the coast moves chiefly over the Atchison, because it makes a little better time, which is important to shippers. Formerly shipped some over the U. P., and has shipped by New Orleans, but not during the past year. Question of time is the only reason. Before the amalgamation, was solicited by the separate agents of both companies, but not very much. They were in competition with each other. The joint agent has occasionally called on witness. He does not express any preference between the two lines. (1559) Traffic to Portland moves over the U. P. and Short Line. Still ships that way, and has for a long time. The northern lines occasionally solicited, but witness never employs them. Never shipped to Portland via the S. P., nor to San Francisco via Portland and boat line. Bulk of the business to California goes by the Santa Fe, but some by the U. P., that is, where the consignee requests the shipment that way.

Cincinnati. With Jergens Co.

Never shipped to Portland via the S. P., nor to San Francisco via Portland.

(1560) WILLIAM PISTER.

Pister.

For seven years traffic manager of the Christian Moerlein Brewing Company, at Cincinnati, the sixth largest brewery in the United States. Made considerable shipments to California up to three or four years ago. Not shipping there now. The joint agent of the two lines has solicited witness, and expresses no preference between the two routes. Shippers fix that themselves, in winter shipments going by New Orleans, and in summer by the Atchison and other northern lines. Doesn't think anything was shipped through by the U. P. Didn't ship to the north Pacific points. Has never shipped to Portland by the S. P., nor by way of Ogden. (1561) Has shipped, to San Francisco by way of Ogden over the D. & R. G., but not over the U. P. That was in recent years.

Cincinnati. Moerlein Brewing Co.

Routes according to season.

Has never shipped to Portland by the S. P.

Freiberg.

(1561) MAURICE J. FREIBERG.

Cincinnati. Distiller.

A distiller in Cincinnati since 1879. The Freiberg & Workum Company. Before the consolidation, the two lines actively competed for coast business. (1562) Shipments to the coast all made to one concern, which insisted on the privilege of routing its own shipments. Traffic to that concern was routed from Cincinnati to San Francisco all kinds of ways, including the New Orleans route, the American-Hawaiian Line, and around the Horn. Some went that way within the last few months. Witness' Portland business has gone by the G. N. and N. P. His business to California over the U. P. goes westward over the S. P.—there is no other way for it to go. Business not much solicited, because it is known that they don't control the routing. (1563) That condition existed at the time of the separate solicitation of the U. P. and S. P. Solicited by the lines leading to the southwest, and the northwest, and west, and even the northern lines. Never routed to San Francisco by way of Portland, nor to Portland by the Sunset route.

Routing of his business.

CLEVELAND, OHIO, FEBRUARY 13, 1909.

Coakley.

(1564) JOHN A. COAKLEY.

Cleveland. Formerly with Q. & C.

Since June, 1904, division freight agent for the American Steel & Wire Company, at Cleveland. Previously, from June, 1901, located at Pittsburg in a similar capacity. Prior to that, for six months, with the Q. & C. as traveling freight agent, and for two years before that with the American Steel Hoop Company, as chief clerk to the traffic manager, and previously engaged in various clerical capacities with the B. & O., the Pittsburg & Western, and the Pennsylvania.

(1565) As representative of the Q. & C., worked in connection with the S. P. S. P. endeavored to route by New Orleans and El Paso, and the U. P. by Omaha. Competition was active. American Steel & Wire Company ships to the coast chiefly by Omaha, but also considerable by El Paso. Formerly traffic moved from this territory by New Orleans, but witness has not moved any that way since his connection with the Wire Company. Considers that an unnatural gateway. The mileage is about 900 miles longer than by Omaha, and the route takes from six to eight days longer. The fact that business formerly moved that way was probably due to the personal influence of the S. P. agent, Mr. Connor. (1566) Remembers business moving to San Francisco by the Can. P. There was a differential rate via Vancouver. The same man represents both companies now at Cleveland. The joint agent now aims to get the long haul by Omaha, otherwise to take whatever haul they can get. The competition between them and the Atchison is very active. Do not seek to route particularly via New Orleans. Their solicitation is of a general character, without discrimination as between the two companies. Considers solicitors very valuable to the trans-continental lines, and of considerable benefit to the Wire Company.

New Orleans unnatural gateway.

Competition between joint agent and Atchison very active.

(1567) Solicitation described. Witness' traffic to the north Pacific during the season of navigation moves practically exclusively by boat, via Duluth, the G. N. and N. P., and by Omaha, and when lake navigation is not open, by Chicago and St. Paul. Witness aims to divide it pretty equally. (1568) Central California traffic moves over the Atchison and U. P. A small proportion goes over the Rock Island via El Paso. A large proportion of the Los Angeles business goes over the San Pedro, but none of the San Francisco. The Wire Company's tonnage for the coast is probably the largest out of Cleveland. U. P. doesn't get any of Wire Company's business for Seattle or Tacoma. Witness satisfied with the service given him by the joint agents. Business from Pittsburg territory by way of New Orleans has to go 1,000 or 1,200 miles to reach the S. P.

Lake and rail route.

Service satisfactory.

(1569) The fact that the U. P. Ogden route has been enormously improved, has had a very influential effect on routing traffic that way. The shipper is not interested in the division of rates. There are a great many lines soliciting traffic from the Ohio territory to the Pacific coast. The lines leading to New Orleans do not actively solicit that way. Witness has been given to understand that the division of the rate allowed them is so small that the business is unremunerative on account of the large mileage. (1570) The lines leading to El Paso, naming them, solicit business very actively. So do the lines connecting with the D. & R. G. or the U. P. Such business as would move over the St. Paul, the Northwestern, the Burlington, the Rock Island, the Missouri Pacific, or the M. K. & T. to California points, would ultimately pass over the S. P. or the San Pedro, unless it went over the Atchison via Pueblo. By the latter route the intermediate carriers would get the short haul, and ordinarily railroads aim to get the long haul wherever they can. All the trans-continental lines have been physically improved.

U. P. Ogden route greatly improved.

Division via New Orleans so small lines do not solicit the business.

Business would have to go over S. P.

(1571) Could not testify as a fact that there has been some change in the divisions, which caused the Q. & C. and L. & N. to stop active solicitation, but that was witness' impression. There has been no change in the through route, and witness doesn't know whether there has been any change in the divisions, or not, but thought the L. & N. and Q. & C. got such a small revenue that they would prefer other business. The Q. & C. and L. & N. do not, however, refuse to handle that business, and do handle some of it. Business has fallen off that way, for one reason, because the solicitation that way by the S. P. has lessened; also because of the improved service and shorter mileage by Omaha. The latter is the basic reason. Probably the bulk of the traffic moved by Omaha in the old days. Witness finally acquiesced in Mr. Severance's question to the effect that business moved to a greater extent via Omaha than by the Sunset route, "because they move it the other way," namely, by Omaha.

Improved service by Omaha.

Boltz.

(1572) F. W. BOLTZ.

Cleveland. With Nat'l Petroleum Ass'n. Formerly in railroad service.

For three years traffic manager of the National Petroleum Association at Cleveland. Previously, for four years, engaged in the mercantile business. Prior to that in the service of the Lake Shore and Michigan Southern at Cincinnati, in the general freight department, from 1881 to 1887. Then entered the employ of the C. M. & St. P. Railway, as traveling freight agent, and subsequently as commercial agent at Cleveland. In 1898 transferred to Sioux City as division freight and passenger agent. In January, 1899, entered the employ of the Iowa Central as general agent at Cleveland. Then, three years later, entered the mercantile business at Cleveland. (1572) Agents of the Harriman lines named.

(1573) The S. P. preferred New Orleans gateway, U. P., Omaha and Ogden. As the agent of the C. M. & St. P., witness solicited business in connection with the U. P. via Omaha or Kansas City. Competition between U. P. and S. P. was extremely active. Considerable business moved by New Orleans from Ohio territory. (1574) In the employ of the Iowa Central at the time of the consolidation, with headquarters at Cleveland. Joint agents named. (1575) The National Petroleum Association comprises thirty odd independent oil refiners, located in Ohio, Pennsylvania, New York, Kansas and Canada. Witness is solicited by various agents. The general agent of the S. P. and U. P. expresses no preference between the two. Business for north Pacific moves usually over the N. P., some via U. P. for Portland. This business not very extensive. It is greater to California points.

Competition active between U. P. and S. P.

(1576) This is due to the excessive freight rates, and also to the fact that until two years ago it was customary to charge for the return of empty tank cars to the Missouri River. Statement that rates were excessive, applied to the entire Pacific coast. Use all trans-continental lines. At present very little is moving by New Orleans, and what goes that way is due to the expressed wish of the consignees. Some shipments are sold f. o. b. and routed by the consignees, and others not. (1577) Remembers that considerable business moved via Vancouver on the Can. P. differential. Great bulk of National Petroleum Association's business moves in tank cars, which are owned by the shippers. Thinks it wise for a company to maintain solicitors, for the reason that they get more business. Method of solicitation described.

Routing of traffic.

(1578) While witness represented the St. Paul, at Cleveland, from 1887 to 1898, he endeavored to move traffic over the U. P. via Omaha or Kansas City, also in connection with other western Missouri River lines, such as the Atchison or Missouri Pacific. Frequently had business move via all of the western Missouri River lines. Simply sought the long haul to the Missouri River. The U. P. was his preferred connection, however, on business for California points. (1579) St. Paul got in all about 500 miles out of that business from this territory, and the U. P. 1,000. From Ogden

Solicited for the long haul.

to San Francisco it was 850 miles, so witness' work inured to the benefit of the S. P. and U. P. The U. P. in soliciting for itself necessarily solicited for the S. P. To the best of witness' recollection there was an arrangement by which business did move for a certain period over the U. P. to Portland, and by steamer down to California points. Witness never attempted to solicit business for that route.

Movement via Portland.

(1580) His solicitation was largely in connection with the U. P. against the Atchison. The latter had their own line in Chicago, and didn't work as closely with the St. Paul as the U. P. did. Didn't know whether any business moved by El Paso at that time. Almost all the lines solicited. (1581) The Burlington, whether working via the U. P. or the D. & R. G. would be working for the S. P., and that was true of the Rock Island prior to the opening of its line to El Paso; also as to a portion of the Missouri Pacific, it having two outlets, one by way of Denver or Pueblo, rather, and the other by way of the Iron Mountain, down through Texas. The Rock Island, the Missouri Pacific, the M. K. & T. and all the lines leading to the southwest and west actively solicit traffic. There has been very great improvement in the service via New Orleans. Witness' interest as a shipper has been efficiently served by the joint agent.

Solicited with U. P. against the Atchison.

All were working for the S. P.

Service via New Orleans greatly improved.

(1582) Change witness referred to in through rates on petroleum was made May 29, 1906. The charge of $1.05 for the return of empty tank cars to the Missouri River was eliminated, and the railroads agreed to establish a blanket rate, 90 cents per hundred, from all points east of the Missouri River to Pacific coast terminals, instead of the charge formerly made on combination of locals to and from Chicago. That arrangement continued in force until January 1st of this year, when the rate was advanced to $1.00 per hundred. At the time the charge for the return car was abolished, the rate which was formerly 78½ from Chicago west, was advanced to 90. There has been a decided increase in witness' Pacific coast trade since the blanket rate of 90 cents per hundred was made effective. The advance to $1.00 will again eliminate competition on the coast, so far as the independent refiners are concerned, to a very great extent. (1583) 90 cent rate put witness on an equality with the refineries of the Standard Oil Company, but he was unable to meet the local competition on the coast. There is a large oil production in southern California. None in Puget Sound territory, so far as witness knew. Never shipped anything to Portland by way of New Orelans. Shippers are not interested in the division of the through rate.

Reduction in oil rates.

(1584) Prior to the change in rates spoken of, the petroleum rate from all points east of Chicago to the coast was based on the local rate to Chicago, in addition to the 78½ cent rate beyond, so that previous to this adjustment the Standard Oil refineries at Whiting had the 78½ rate to Chicago. The weight of an ordinary tank car would be about 50,000 pounds, so that the railroad com-

Basis of petroleum rates.

pany's revenue would be about $450 a car. (1585) The advance to $1.00 has prevented successful competition on the coast, and compelled some of witness' people who had contracts on the coast, to ship via New York and the Isthmus, by the Panama Steamship Company and the American Hawaiian line. These shipments have not yet been made. A vigorous protest has been entered, and witness hopes to induce the trans-continental lines to restore the former rate of 90 cents. Witness ships only by barrels, when shipping by water.

(1586) The advance doesn't operate as much against the Standard Oil as against the independent companies, because the former are able to ship by water from their Atlantic Seaboard refineries in their own tank steamers. They have also made oil out in California. The Standard Oil has not joined in this protest against the increase. The joint agent has rendered effective service, but is no longer competing for business between the two roads. (1587) All the lines have been improved. This has been essential in order to get business, and also because heavy equipment is being used. No reason why the route to San Francisco via Portland is not as feasible as the longer route via Vancouver. Both the rail and steamship haul are shorter that way. The Portland route is rather an indirect one. When witness was soliciting business, he never tried to move any that way.

Never solicited business via Portland.

(1588) At one time, there was an arrangement by which business could move via Portland, but witness did not know of any business having moved that way. Aside from the time when the Can. P. had this differential, none of the northern lines have attempted to work California business. Not sure of the duration of the differential, but thought it existed possibly three or four years, late in the '80's. (1589) The Morgan Steamship Line to California is a longer route than that via Portland. So is the American-Hawaiian Line across Tehuantepec, or the Panama route across the Isthmus, or the clipper ships around the Horn. The matter of distance is a factor in the successful securing of freight, but it can be overcome by other considerations, such as rates. The rates by the Morgan Line are the same as the all-rail lines, but they get a large traffic by that route. Not very much from this interior territory. They do not absorb the rate west of Pittsburg. It takes a shipment four or five months by Cape Horn, and the all-rail route about two weeks. The rate by the Horn is much lower. Also lower by Panama and Tehuantepec than by the all-rail line.

Distance a factor.

(1590) The Morgan line from coast to coast is under a single management, whereas the U. P. line to Portland does not extend east of the Missouri River. The S. P. has three fast ships a week to New Orleans and Galveston, where it has extensive docks and terminals, and transfers the freight and sends it through in practically solid train lots, without break, to California, and the U. P. attempting to pick up freight in the middle of the continent, depending on the connections going to it, in broken lots, would not be

Morgan line under single management.

so favorably situated as the S. P. It is also a very important consideration that the U. P. is a direct connection with the S. P. at Ogden, and must be benefited by a very large interchange of traffic with the S. P. at Ogden, and if it should attempt to work the Portland route for California business, it might, if the two systems were independent, jeopardize that relation. (1591) If the Portland route was worked on a differential, it would bring down all the trans-continental rates, including that over the Sunset route. At equal rates, does not think any considerable business would move by Portland. Thinks that if as independent companies, the S. P. diverted all its unrouted traffic to the D. & R. G. as against the U. P., the latter would lose very much more than it would gain by that sort of enterprise.

Importance of U. P. connection at Ogden.

(1592) Thinks the possession of the Portland route would enable the U. P. to protect itself against any unfair demand for division by the S. P. Thinks, however, that the U. P. would suffer more than it would gain by attempting to use the Portland route, by reason of the diversion by the S. P. to the D. & R. G. As a rule, railroad managers are about as much alive to their own interests as other people. (1593) If the merger were not in effect, the S. P. would naturally try to route business via New Orleans, and would send unrouted business that way, so that if the S. P. undertook to fight the U. P. by diverting unrouted traffic to the D. & R. G., the S. P. would have to take unrouted traffic from the Sunset route, where it gets the long haul, and divide it up with the D. & R. G., in order to hit the U. P. That wouldn't pay very well. There is a great deal of traffic that moves all-rail in spite of the Sunset route, so, assuming that no more traffic was moved all-rail during this controversy than moves now, why, the S. P. could divert that amount to the D. & R. G. As it is now, the U. P. is the preferred connection, and if a controversy arose, the S. P. would naturally change the situation, and make the D. & R. G. the preferred connection, carrying all the traffic that way which it could not get by the Sunset route. There is necessarily a large volume of traffic that will not move by the Sunset route. The Atchison is pretty active in the field.

U. P. could use Portland route at its peril.

S. P. would retaliate.

(1594) If the S. P. insisted upon taking it by the Sunset route, and would not take it by Ogden, it would go by the Atchison. Much the larger proportion of the traffic to the Pacific coast, ever since the trans-continental lines have been open, has moved all-rail, and the S. P. could not move that by the Sunset. It might, however, move by the Sunset route all-rail via New Orleans or El Paso.

(1594) JOHN F. RYAN.

Ryan.

Lives at Toledo, Ohio. For ten years in charge of the traffic of the National Supply Company, (1595) manufacturers of oil and gas well supplies. One of the largest concerns of the kind in the country. Own eight or nine warehouses in Southern California. His traffic to the oil fields of S. P. very large. Warehouses at Los An-

Toledo, Ohio. With National Supply Co.

geles, Bakersfield, McKittrick, Coaling, Orcutt, and Sunset. Some of these points are on the Atchison, and some on the S. P. Some on both. (1596) At the time of the separate agencies, the S. P. and U. P. competed with each other actively, the S. P. working the New Orleans, and the U. P. the Omaha route. Joint agent makes no distinction between the two lines in soliciting. There are no longer any separate agents in this district. Witness' traffic to Southern California moves via El Paso, also over the Atchison, the U. P. and S. P. via Ogden, and the Salt Lake route. Not very much moves by New Orleans.

Agents.

(1597) When the S. P. had separate solicitors, a larger proportion went by New Orleans. Witness' freight is high-grade. It takes a machinery rate, under a Class A rate. Ships by the Tehuantepec route from Toledo. Traffic moves to the seaboard via the Lake Shore, D. L. & W. Delivered out on the coast by the Hawaiian line at San Diego, and then distributed by the Santa Fe. From Toledo to San Diego by the American-Hawaiian line takes from 35 to 45 days ordinarily. From there it is a short distance to Los Angeles. Shipment goes into warehouse there, and is then reshipped into the interior. Nothing shipped by water goes to warehouse at Los Angeles. Shipments to interior points and Southern California go all-rail to save rehandling. American-Hawaiian ships do not put in at San Pedro.

Routing of his business.

(1598) Not prepared to say that if a separate solicitor for the New Orleans route exclusively were put in this territory, it would affect the movement of witness' traffic in that direction. Thinks the right sort of a solicitor might influence some of his freight. Mr. Connor would fill the bill. If Mr. Connor worked exclusively for the New Orleans line, he would get some of that now carried by the U. P. and Atchison. The most direct routes for witness' shipments to Southern California, are the Atchison, and the Salt Lake, and the U. P. and S. P. via Ogden. (1599) That distance is, roughly speaking, 500 miles, as against the New Orleans line. The service by all-rail lines from Ohio territory has been very much improved in recent years. Not prepared to say it has improved relatively more than the line by New Orleans. Has shipped, and still ships, a good deal of business from the seaboard territory by the Morgan line. Never attempted to ship over the U. P. to Portland, and thence down by boat. Has never made any shipments to Portland proper. Not interested in the division of through rates.

Direct routes.

Never used Portland route to San Francisco.

Ryan.

(1600) E. D. RYAN.

Toledo, O. With Milburn Wagon Co.

Since 1902 traffic manager of the Milburn Wagon Company at Toledo, Ohio. Leaves it optional with the solicitor what route to take, but, of course, tries to get the long haul, namely, that via Kansas City or Omaha. If the solicitor learned witness was going to ship by El Paso, he would then try to get the shipment by New Orleans, but otherwise on San Francisco business he doesn't try to work it by the south.

(1601) There are other solicitors representing trans-continental lines in the field. When Mr. Choate, the joint solicitor at Detroit, finds a shipment is contemplated by El Paso, witness never knew him to endeavor to change it and have it go by Omaha, nor, if it were going by Omaha, to attempt to get it by El Paso or New Orleans. Doesn't try to play one line against the other. Witness has sent only a few cars by El Paso. From 1895 to 1900 the Wagon Company had no shipments for the Pacific coast. The wagons for the Pacific coast territory being special, interfered too much with the Company's other work. Since 1900 there have been a large number of shipments, with the exception of last year. California traffic has been about equally divided between the Atchison and U. P. Portland business, 50 per cent. goes to the U. P., and the balance divided over all the routings, the Denver gateway, the G. N. and N. P., a few cars by the Can. P. The first two or three were shipped on account of washouts and blockades on the American lines, (1602) that is, the northwest lines. All these lines have agents soliciting business. The solicitors of the other lines don't call any oftener than the representatives of the U. P. and S. P. Witness disliked to express an opinion because other railroad representatives were present, but said that he thought Mr. Choate was a little bit better than any of them. While there are a few railway solicitors who have nerve enough to argue with the shipper, Mr. Choate goes a little better on that, and on account of his liking to get into an argument, witness has learned many things about the railroad business—things that he had not known or learned when in the railroad service. Doesn't think it necessary to strengthen the S. P. and U. P. representation.

Traffic divided among the carriers.

U. P. and S. P. solicitors call as often as others.

(1603) Never shipped to Portland via the Sunset, nor to California by way of Portland. Taught by experience gained on shipments to Texas, that the service would be poor, first, on account of slowness, and second, on account of damage to wagons in the transfer. It would take a differential of at least 20 per cent. better than the all-rail to pay witness for making shipments via any such routing. The cost of crating wagons would be more than twenty cents a hundred. All the lines from this territory to El Paso, or the Missouri River gateways, or the Rocky Mountains, actively solicit business for California. (1604) If Mr. Choate represented the U. P. alone, he might get a larger percentage for that Company, unless the S. P. were represented by as good a man. He would get a larger percentage, any how, on account of the service being better by the U. P. and S. P. than by N. O. and the S. P. If Mr. Choate represented the S. P. alone, witness didn't think he would be able to secure business for that line via New Orleans. He might via El Paso.

Never shipped to Portland via Sunset, nor to California via Portland.

Service better by U. P. and S. P.

(1604) JOHN D. KLEUTER.

Kleuter.

For about 16 years employed by the Gendron Wheel Company, of Toledo. (1605) For ten years in charge of its traffic. Before

Toledo. With Gendron Wheel Co.

the consolidation, S. P. endeavored to route by New Orleans; U. P. by Missouri River. Now Mr. Choate, of Detroit, represents both, and doesn't discriminate between the two in soliciting. Witness' traffic generally moves to the coast by Omaha. Southern California shipments generally go by Salt Lake route, some by Atchison. To Portland by N. P. or G. N.; not over the U. P., nor over the Can. P., nor by steamship lines.

Rand.

(1606) W. F. RAND.

Cleveland. Railroad clerk.

Railroad clerk, residing in Cleveland. Has been with the Lake Shore since 1887, down to the present time, with the exception of one year, 1889-1890, employed by the U. P. In the Lake Shore office witness had charge of the eastbound billing department, until a year ago, when the east and west bound departments were consolidated, and he became assistant to the chief bill clerk. In the same department all the time. Acted as freight solicitor for the U. P. at Cleveland. (1607) Succeeded John Moran. When witness returned to the Lake Shore, the U. P. office at Cleveland was closed up, and the Company represented through traveling men. Witness' business was to get traffic for the U. P. by the Missouri River gateway, working in conjunction with the C. M. & St. P., the C. & N. W., the C. & A., sometimes with the "Q," and the Rock Island.

(1608) It is customary for freight solicitors to work with their connections. Mr. Connor, at Cincinnati, then represented the S. P. (1609) Solicited Portland business for the U. P. Mr. Connor worked the New Orleans gateway. The competition between the two companies was very active. The S. P. was U. P.'s strongest competitor for California business. N. P. chief competitor for Portland business. Didn't know of the Can. P. doing any business into Pacific coast points in the United States at that time, but presume they did. Heard of some shipments going on a differential. Remembers several carloads of machinery going by Vancouver for San Francisco. Doesn't know of equipment having anything to do with his solicitation of business for the U. P.

Competition between S. P. and U. P.

(1610) The business that went by the Rock Island and Burlington went to Denver, and then over the U. P. from that point to Ogden, and then over the S. P. All the business he got for the U. P. went over the S. P. in the end. That was also largely true of the Burlington and Rock Island. (1611) There were a great many agents soliciting that way for the Ogden route, the Rock Island and the "Q" were soliciting mostly that way. The Atchison was a strong competitor of the U. P., very active in the field. Witness never solicited any business for California by way of Portland, nor knew of any business moving that way.

No business via Portland route.

Longacre.

(1611) R. F. LONGACRE.

Lakewood, Ohio. Formerly railroad man.

Resides at Lakewood, Ohio, and for five years traffic manager of the Atlantic Terminal Line. Previously connected with various

railroads, beginning in 1884 in the general freight office of the Nickel Plate at Cleveland. In 1895 left them for the Erie, and remained with latter road until 1901. Then was employed by the D. L. & W. (1612) Handles all kinds of oils, paints and greases, and numerous specialties which oil people manufacture. California shipments move over all the different routes. Witness aims to divide it up as nearly as possible among the different roads. Mostly less than carload shipments. Traffic to Portland and Puget Sound points moves in connection with U. P. and Short Line, and some in connection with N. P. and G. N. Traffic solicitors of all these various lines solicit witness. The agents of the Harriman lines are glad to get business either way. Last three years witness was with the Erie he was division freight agent at Meadville, Pa. Prior to that a rate clerk and chief clerk of the general freight department. The S. P. and U. P. then had separate agencies, and competed actively in that territory.

Traffic solicited by all lines.

(1613) S. P. endeavored to route by Cincinnati and New Orleans, and U. P. by Missouri River. Ships by boat via Duluth during the season of navigation to North Pacific coast. Does not ship by the lakes to Duluth, and then the Omaha route to Omaha, and over the U. P., but only over the N. P. and G. N. Doesn't ship anything to the Pacific coast by the Atlantic Lines, by boat. Meadville is one of the Pittsburg common points. Doesn't remember anything going from Meadville via New York and the Morgan line. (1614) All business over the U. P. to Pacific coast points south of Portland moved over the S. P. from Ogden. Many other lines were soliciting business that ultimately moved over the S. P. from Ogden. The traffic controlled by the Northwestern, the St. Paul, the Burlington, the Rock Island, and the Missouri Pacific, for California points, would naturally go over the S. P. from Ogden. Never shipped any business for California via Portland and boat line down, nor to Portland by way of New Orleans. Never knew any to move that way.

S. P. and U. P. solicitation.

All coast business of U. P. moved over S. P.

Never used Portland route.

(1614) A. J. HENDERSON.

Henderson.

Fifteen years traffic manager of the White Sewing Machine Company and the White Company, at Cleveland, Ohio. (1615) Ships probably 300 carloads to the coast annually, generally divided up among all the lines—the Missouri River lines via Ogden, Omaha and El Paso. Do not ship by New Orleans. Did ten or twelve years ago. Separate agent of S. P. formerly solicited by New Orleans, and to a certain extent was successful in routing witness' traffic that way. The joint solicitors do not discriminate between the two routes. (1616) Portland business moves by the Northern lines all-rail all the year—G. N. and N. P. Before the consolidation, competition between the U. P. and S. P. for coast business was very active. Business to the Orient moved by the Can. P. via Vancouver. None moves by the Morgan lines. Has made a few shipments to the Orient by way of San Francisco. Not sure,

Cleveland. With White Sewing Machine Co.

Does not ship via New Orleans.

but thinks it went over the Occidental and Oriental. Doesn't remember any going by the Pacific Mail. Thinks if a line is represented by a local man it stands a better chance of getting business. Active solicitation of local men secures business.

Joint agents as active as separate agents.

(1617) Joint agents as active in their solicitation as separate agents ever were. Don't let any business get away, if they can help it. There are a great many solicitors for other lines. All U. P.'s business for California went over the S. P. west of Ogden. Some of the lines soliciting in Cleveland, named. There has been considerable improvement in the service of the trans-continental lines in recent years. Never shipped anything to California by way of Portland and boat down. (1618) Nor to Portland by way of New Orleans; nor to the Orient by way of Portland. Doesn't care about the division of through rate. In the old days, the U. P. and S. P. were competing with each other. Now they are not.

Never shipped to California via Portland, nor to Portland via New Orleans.

Rushforth.

(1618) WALTER RUSHFORTH.

Meadville. Wire screens.

Lives in Meadville, and for 18 years in charge of the traffic of W. S. Tyler Company, manufacturers of wire screens. (1619) California traffic moves chiefly through Omaha and Ogden. Ships some to Los Angeles and San Francisco by El Paso, and some by the Atchison and Rock Island. Never shipped any by New Orleans. In the absence of special direction, does not ship to Portland by the U. P., but by the G. N. and N. P. (1620) Witness routes a good many of the shipments. The others are routed by the consignee. The separate S. P. agent tried to route traffic by New Orleans, and the U. P. by the Missouri River. Knows Mr. Hild as the present U. P. man, but the S. P. business is so little, he doesn't remember any S. P. man. Makes some shipments using the lakes during the open season, to Montana chiefly. Doesn't ship to the coast that way.

(1621) Sometimes receives letters from Connor in reference to freight rates. One of these, dated July 22, 1902, appears in the record. In the past has shipped goods to California by New Orleans. (1622) Has also shipped by the Atchison, and some by the Ogden route, the freight going over the S. P. west of Ogden. Never shipped to California by way of Portland, nor to Portland via New Orleans. On Montana shipments figure the time by boat via Duluth is better. The rates are also lower. Witness gets direct connection with the delivering road at Duluth.

Never used the Portland route to San Francisco or New Orleans route to Portland.

Norvell.

(1622) W. G. NORVELL.

Detroit. With Park, Davis & Co.

Lives at Detroit, Mich. Since January, 1899, in charge of the shipping department of Park, Davis & Co., manufacturing pharmacists. (1623) Not called upon by solicitors much prior to January, 1902, but since then regularly. About 65 per cent. of witness' output moves carload, and the balance L. C. L. Pacific coast shipments usually move L. C. L. Principal points to which

shipments in California are made, are Los Angeles and possibly San Francisco. Ship generally U. P. and S. P. to Frisco, and Atchison generally to Los Angeles. Doesn't use the San Pedro route, though they have shipped small quantities that way. Also small quantities via New Orleans. Hasn't stopped shipping that way.

(1624) Mr. Choate doesn't discriminate between the two lines. Traffic to North Pacific coast points, including Portland, moves over the N. P. and G. N. None of it has moved over the U. P. of late years. Witness uses the Lake route almost exclusively during the open season. Business by the lakes goes to the North, not to California points. Never shipped anything to California by Portland and boat down. (1625) Never knew of any shipments to move that way. Never shipped any to Portland by way of New Orleans or El Paso. Rates by the lakes lower than the rail rates. Not interested in divisions.

Uses Lake route. Never uses Portland route.

(1625) WILLIAM J. GORDON.

Gordon.

Lives at Detroit, Mich. About seven years traffic manager of the Anderson Carriage Company at Detroit. Previously, for nine years, with the Michigan Central at Detroit. (1626) Before the merger, the U. P. and S. P. were separately represented at Detroit by traveling agents. The S. P. endeavored to route traffic by New Orleans, and the U. P. by Omaha. The competition was active, but the U. P. was more active, as it was in a better position to get business. The joint agent, Choate, does not discriminate between the two lines. There is no competition between them for business out of Detroit. On coast shipments witness uses all the lines, rather favoring the U. P. Doesn't ship by New Orleans, nor El Paso. To North Pacific coast points generally ships over the N. P. and G. N.

Detroit. With Anderson Carriage Co.

Uses all lines, favoring U. P.

(1627) Ships to Portland by the U. P. Sometimes by the N. P. Also ships to Southern California by the Salt Lake route. Before the merger, if the S. P. couldn't get business by way of New Orleans, they tried to get it by Ogden. "If they couldn't get the long haul, they were satisfied to get the short." Some of the lines soliciting business mentioned. Witness would not regard the U. P. and Chicago & Northwestern as competitors for coast business. They are connecting lines. Never shipped anything to California by Portland and boat line. Goods would not stand the transfer. All shipments over the U. P. to California before the opening of the San Pedro, went to final destination on the S. P. (1628) Not interested in the divisions. Do not use the lakes at any season, because of transfer.

U. P. and N. W. not regarded as competitors, but as connections.

Portland route not used.

(1628) JOHN L. EVANS.

Evans.

Lives at Cleveland, Ohio. For five years manager traffic department of Sherwin & Williams Company, manufacturers of paints.

Cleveland. With Sherwin & Williams Co.

etc., at Cleveland. Previously, for one year, with a boat line on the lakes, and before that, for two years, with the Atlantic Refining Company, and prior to that in the railroad and steamship service. Altogether, in the transportation business in Cleveland, 27 years.

Routing of his traffic.

(1629) Ships to the coast from plants at Cleveland, Kensington, Ill., and Newark, N. J. From Newark usually by the American-Hawaiian Line. Ships principally from Cleveland. That traffic goes by U. P., S. P., via Ogden; some via New Orleans, and some via El Paso; also ships some of it by the Atchison. Ships to North Pacific coast points by the U. P., N. P., G. N. and Can. P. Uses the lakes very little.

(1630) None of the traffic by the lakes goes to California by the U. P. or Atchison. The lakes are only used for North Pacific coast business. Before the merger, the S. P. endeavored to route by New Orleans, and the U. P. by Omaha. Witness' business was competed for by the two lines. (1631) Since the consolidation, where the initial or some intermediate line has secured witness' business, the joint agent tries to get it from the point of connection with those lines, and on coming to witness as an independent proposition, witness thought Mr. Connor would like to see the business go through Omaha.

Joint agent works with connections.

Portland route used briefly following earthquake.

(1632) None of the Portland business goes by way of New Orleans or El Paso. Immediately after the earthquake, shipped to California by Navigation Company to Portland, and the boat line down. Has never used the Shasta route. That was because of the railroad blockade, and freight could be delivered at the water front by using the boat line. That was the only time witness ever shipped that way. Other shipments always went over the S. P. west of Ogden. Not interested as a shipper in the divisions. Uses the lake route for coast points north of Puget Sound. The lake lines have a differential.

Hart.

(1633) JOHN HART.

Cleveland. With Gresselli Chemical Co.

For 18 years traffic manager of the Gresselli Chemical Company, at Cleveland. Ships to the Pacific coast mainly from the Chicago plant. Occasionally ships from Cleveland. The separate agents of the two lines formerly solicited witness. (1634) The S. P. worked the New Orleans route, and the U. P. the Omaha. Since the merger, the joint agent takes it any way he can get it, but preferred the Omaha route, witness thought. The joint agent is continually after the business, and as witness doesn't route through New Orleans very much now, he thought the agent preferred it by Omaha. No special reason for ceasing shipments by New Orleans, except that at the time Mr. Connor separately represented the S. P., his personality had something to do with getting business that way. In the old days there was a pretty even division between the New Orleans and the U. P. route. There is none going by New Orleans now. The freight solicitors are of considerable importance to the

Active soliciting by joint agent.

Used to be even division. None via New Orleans now.

railroads in getting business, and are also of service to the shippers. Business for North Pacific coast points, including Portland, goes exclusively G. N. and N. P.

(1635) The joint agent adequately serves the purpose of both lines, so far as witness is concerned, and looks after his freight as well by the Ogden route as he would by the New Orleans. The Ogden route is the shorter and better route. If business went by way of New Orleans, it would be largely on account of solicitation, to help out a good fellow. Never sent any freight to California by Portland, and boat down, nor to Portland by way of New Orleans or El Paso. There are a great many lines soliciting witness' traffic for the Pacific coast, including all the intermediate lines. Not interested in the division of the through rate.

Joint agent adequately serves the purpose.

Portland route to San Francisco not used.

(1636) It is an advantage in getting shipments through rapidly to have them go over as few lines as possible. Doesn't think there is any competition between the U. P. and S. P. now. By saying that the joint agent served both lines efficiently, he meant that the agent is soliciting for both lines continually, and witness' coast business, being Frisco business, it goes through Ogden, but witness has any amount of business in the southwest which the agent is continually soliciting for the S. P. Witness doesn't know that it is worse for the S. P. no longer to get a part of his coast business by way of New Orleans.

(1637) J. E. WILKINSON.

Wilkinson.

Lives at East Cleveland, Ohio. From October, 1899, in charge of traffic of Chandler & Price Company, manufacturers of printing machinery, at Cleveland. Before the merger, the S. P. endeavored to route business by New Orleans, and the U. P. by Omaha. Nearly all witness' shipments are routed by the consignee, and the joint agent calls simply to ascertain about the time the shipment is going forward, and the lines out of Cleveland. (1638) The agent's interest is simply to see that the consignee's routing is respected. If he found business was being routed by other roads, he would make a memorandum of it and go after it at the other end of the line. He is satisfied if it is routed either U. P. or via New Orleans. Thinks that traffic can be influenced by personal solicitation. Coast shipments go U. P. and Los Angeles business U. P.-Salt Lake route. San Francisco business usually moves Illinois Central-S. P. by way of New Orleans. Some of it goes Atchison. Hasn't sent over the U. P.-S. P. Ogden route for some time. (1639) Thinks this is mainly because of the efforts of Mr. Connor and Mr. Doul, the Ill. Central representative. Hasn't sent by El Paso for some time. Never shipped to California by way of Portland and boat, nor to Portland by the Sunset route. Not interested in the division of the through rate. All the intermediate lines are actively soliciting witness' business. Some of the soliciting lines named. (1640) Card of George B. Hild, Traveling Freight Agent, of the Harriman

East Cleveland. With Chandler & Price Co.

Shipments routed by consignee.

Portland-San Francisco route not used

Lines, at Cincinnati, Ohio, set forth. The reverse side contains a map identical with Exhibit 116.

Stewart.

(1640) O. J. STEWART.

Cleveland. With Standard Sewing Machine Co.

Traffic manager Standard Sewing Machine Company, at Cleveland. Ships to the coast chiefly over the Atchison, the U. P. and S. P., and to Portland over the G. N. and N. P. (1641) The joint agent doesn't solicit for one line against the other. Thinks solicitation secures traffic. Method of solicitation described. Oriental business goes via New York. Shipments to Australia and New Zealand via Vancouver. Never shipped to San Francisco by Portland and boat, nor to Portland by New Orleans or El Paso.

Never used Portland route.

Joint agency serves as well as separate did.

(1642) Present solicitors of the Harriman Lines adequately serve witness' purpose. Taking into account the location of the lines, the joint representatives are serving him just as well as two separate representatives could. The joint representatives could not, however, compete with themselves. Most of witness' shipments, however, go over the Atchison, and he has not had to call on the Harriman solicitors, for instance, in tracing cars, or anything of that kind, in late years. (1643) As between the two lines, it is a question of a long or a short haul with the S. P., but the U. P. has no interest in shipments by New Orleans. Witness not concerned as to what roads get the revenue, or how they divide it.

As between the two lines a question of a long or a short haul.

Krause.

(1643) GEORGE KRAUSE.

Cleveland. With Big Four.

Lives at Cleveland, Ohio. For 33 years in the traffic department of the Big Four. Now commercial freight agent at Cleveland. (1644) Agents of the two companies named. Previous to the merger, the solicitors had been competing for California business, the S. P. endeavoring to route by New Orleans, preferably, next by El Paso, and failing to get it in either of those ways, then by Ogden. The U. P. endeavored to route through the Missouri River gateway. (1645) The Big Four had an initial line's interest in this traffic both ways, whether it went by Cincinnati and then south, or went west to Chicago, and was therefore in a position to observe the way that the S. P. solicitors were working the business. Since the merger, the joint solicitors aim to get the business any way they can, without preference.. They work against the Atchison. If an L. & N. representative discovers a carload somewhere, he brings it to the attention of the joint representatives of the Harriman lines, and they work with him to secure the car through New Orleans. If, meanwhile, some of the Missouri River lines attempt to get the same car, Mr. Connor is neutral.

S. P. solicited via New Orleans, El Paso, Ogden.

Joint agents work for all routes without preference.

(1646) Witness thought Mr. Connor was so situated that he could work both lines, but admitted he couldn't work both lines on the same car at the same time. That element of competition is eliminated. In the last ten years the situation has changed, and more business goes through the Missouri River gateway. One reason is

that Mr. Connor is now working both lines. (1647) The situation is changed entirely. The Atchison have become much stronger by reason of their entrance into San Francisco. The Rock Island have strengthened the El Paso gateway very greatly, and in Cleveland all of the Missouri River lines have offices now, and they all fight for the Missouri River gateway, and by reason of the Sunset route from Cleveland to Frisco being about 1,000 miles longer, the latter has lost its standing. The change in the situation has also been largely brought about by the appointment of traffic managers by the industrials. They are always fighting to get improved service, and pitting one line against the other, and the improvements, in witness' opinion, seem to have been more through the Northern gateways. The Southern route is not longer now than it was ten years ago, but the service given then would not be satisfactory now. There has been an improvement both ways, but the New Orleans gateway is too far to be satisfactory. The roads have been able to shorten the time more through the Northern gateway than through the Southern, by reason of the less distance. Witness had a case the other day, where a shipper wanted to obligate him to put a car through to Frisco in ten days, while ten years ago, if we got it through in twenty, he would have thought he was doing well.

Atchison has become much stronger.

Effect of Traffic Managers of industrials.

New Orleans gateway too far to be satisfactory.

(1648) Witness didn't handle that car, but the shipper told him the Lake Shore and Atchison had promised to put it through in that time. There is more apt to be congestion at Chicago than at the gateways further south. The Big Four is a part of the New York Central system, but witness didn't know that the U. P. is a stockholder of the New York Central, and Mr. Harriman, a Director of the latter. He has heard of it from the newspapers. (1649) Since talking to the Government representatives, witness has also talked over the testimony with the Harriman representatives. (1650) Before the merger, the S. P. was the U. P.'s only outlet to California. The U. P. and Central Pacific are connecting lines. The all-rail lines, both before and after the merger, have competed with the Sunset route of the S. P. The S. P. owns a link of 850 miles in the U. P.'s all-rail line. So far as the S. P.'s interest in the traffic from Cleveland territory to California is concerned, it is largely a question of division, or, rather, the short haul as against the long haul; that is, except as against the Atchison.

U. P. and C. P. connecting lines.

With the S. P. it is a question of the long haul against the short haul.

(1651) All lines through the El Paso gateway, and through the Missouri River and Colorado, are actively soliciting business. The Big Four tries to get the initial haul either way. Makes no effort through any particular gateway, except it wants to get a haul, whether it is long or short, but, of course, tries to get a long haul, if it can. When an agent's attention is called to a car by a connecting line, he tries to work with them. That is the rule. Never knew of an attempt to move freight over the U. P. to Portland, and by boat down to California. Doesn't recall having attempted to move freight to Portland by way of New Orleans. The reports

Never knew of use of Portland route to San Francisco nor to Portland via New Orleans.

of Mr. Harriman's stock purchases in New York Central have not influenced witness' solicitation of freight.

Wicks.

(1652) J. C. WICKS.

With Erie Iron & Steel Co.

For six years has handled the traffic of the Erie Iron & Steel Companies. California shipments go over the Atchison, largely because of the good time they have given, and because they have asked for the business. Has not been solicited by the Harriman lines. (1653) Solicitors are a help to witness, because they direct his attention to sales and other matters not pertaining to transportation. Also furnish information as to rates, trace cars, and obtain settlement of claims. Thinks an active solicitor can secure business for his road. Ships to Portland and Seattle over the U. P. and the Northern roads. (1654) The consignees generally route the business.

Solicitors a help.

Peck.

(1654) FRANK A. PECK.

With Brown Hoisting Machinery Co.

About seven years traffic manager of the Brown Hoisting Machinery Company. Ships chiefly by Omaha. Not much by the Atchison. To the North coast by the N. P. and G. N. The joint solicitor does not discriminate between the two lines. (1655) Solicitation described. All shipments over the U. P. for California go over the S. P. Has never shipped to California by Portland, nor to Portland by New Orleans or El Paso. Has no interest in the division of the rate.

Never shipped via Portland to San Francisco, nor to Portland via New Orleans or El Paso.

(1655-1656) B. C. KRIDLER.

Traffic manager of the Cleveland Hardware Company for two years. Testimony immaterial.

Schwerin.

(1656) R. P. SCHWERIN.

Testimony given before the Interstate Commerce Commission at San Francisco, January 29th, 1907.

Vice Prest. and Gen. Manager Pacific Mail.

Lives in San Mateo, Cal. (1657) Vice-President and General Manager of the Pacific Mail Steamship Company since 1893. The steamships owned by the Pacific Mail Steamshp Company in 1893 were "The City of Peking," the "Peru," the "Rio Janeiro," the "Colima," the "Colon," the "San Juan," the "San Jose," the "San Blas," the "Acapulco," the "Barracouta," the "Starbuck," and the "City of New York." Of those ships the "Rio Janeiro," the "City of Peking," and "Peru," were engaged in the Oriental trade. They sailed out of San Francisco. They touched at Yokohama, Kobe, Nagasaki, Shanghai, and Hong Kong in the Orient and sometimes at the Port of Amoy. Two of those boats were withdrawn after the "Korea" and "Siberia" were put in service.

Steamships owned.

(1658) The "Peru" was withdrawn from the service, the "Rio Janeiro" was lost, and that left the "Peking," the "Siberia," and the "Korea," on the Trans-Pacific. There was an interval after the "Rio Janeiro" was lost that they had only two vessels in that

service. Those boats made up the Oriental fleet until the "Mongolia" and "Manchuria" were put in the service, when the "City of Peking" was withdrawn. The "China" was on the run all the time—witness should have mentioned her. The "Peru" was not in the service until after the "Rio Janeiro" was lost. "We had three on all the time, and we took one off the Panama line and put it on the Trans-Pacific line. The "China" was there all the time. She was there when I went into the company." When the "Mongolia" and "Manchuria" were put in commission, the line consisted of the "Korea," "Siberia," "Manchuria," "Mongolia," and the "China"—five ships.

(1659) Prior to 1902, the "Rio," the "China," and the "Peking" made up the line, as far back as witness was with the company. The "City of New York" was on the line part of the time when they had extra freight. She was lost. The company had agents at the different Oriental cities. Howard is the Pacific Mail's agent at Yokohama and has been since witness' connection with company commenced in 1893. Tilden was agent at Kobe until three years ago, the latter was then promoted to Hong Kong and afterwards to Shanghai, leaving the service of the company about a year and a half ago. (1660) He was succeeded at Kobe by Campbell who is still agent there. Holmes, Ringer & Company are agents at Nagasaki. Fearin & Daniel Company at Shanghai from 1894 until 1904, and since 1904, Thebau. Van Buren at Hong Kong until three years ago, and since then Tilden until the latter was relieved by Silverstone. (1661) The freight that is brought this way by the P. M. originates as far west as Calcutta, and as far north as North China.

Agents in Orient.

Origin of traffic.

It is assembled by these various agents at these ports. The means these gentlemen take to secure traffic—well, they are in communication with shippers—the usual methods that would be employed anywhere, not so much solicitation by correspondence as solicitation personally, or the shipping men coming into the office and asking if they can get space on the steamers. The freight is not only handled by the houses there, but very largely controlled by the parent houses in this country. It is routed both by the houses in China or Japan, and also in this country.

Means to secure traffic.

By whom traffic routed.

(1662) All the time that the P. M. has been represented in the Orient by these gentlemen at these various places, they have had practically the same functions, that is, to look after passenger and freight traffic and procuring it to be sent to this country by the P. M. ships. Those ships still make through billings of commodities that are destined to points in the eastern parts of the United States, issuing the bills of lading in the Orient.

Through bills of lading.

Mr. Garland is the present official of the P. M. that has charge of the through freights. Witness has the right to approve or disapprove his actions. Witness takes a hand in the making of rates. Steamship rates on the Pacific are affected chiefly by competition. When witness started with the P. M. in 1893, that company was competing for business with all the other lines that crossed the

Rates affected chiefly by competition.

O. and O. S. S. Co.

Pacific, with the exception of the Occidental and Oriental Line, with which it worked in unison. The O. & O. had a separate organization and the P. M. was its agent for freight and passenger business. The latter has continued to act as the O. & O.'s agent during all the time witness has been with them. The O. & O. has three ships, and had the same number when witness came with the Pacific Mail. Their names were the "Doric," "Coptic," and "Gaelic."

(1663) The "Gaelic" was given up. For several years the O. & O. had only the "Doric" and the "Coptic." The P. M. did not manage the line of the O. & O., but simply acted as its agents for freight and passenger business, for which service the P. M. was paid. The P. M. has been in the Oriental trade since 1868. The P. M. was then the pioneer and only line. It took the first cargo of flour in 1868 to the Orient. The Occidental and Oriental Line was established in 1874. Its manager was, when witness' connection with the P. M. began, and still is, D. V. Stubbs, a brother of J. C. Stubbs.

Pacific Mail pioneer S. S. line.

(1664) In so far as the procuring of traffic is concerned, the P. M. and O. & O. have always since witness has represented P. M., acted in harmony. They obtain traffic through the same instrumentalities. When witness first came to the Pacific Mail it had no agencies in the United States, except the one in San Francisco. Between 1895 and 1897, Mr. Hawley was appointed agent in New York City. He continued in that capacity until he left the Southern Pacific Company about 1902. He was succeeded by Spence, his chief clerk, in charge of the freight business, as general eastern freight agent of the P. M. and by Nutting as its eastern general passenger agent. An agency was also established in Chicago, with Neimyer in charge. These gentlemen were all connected with the Southern Pacific.

Pacific Mail and O. and O. acted in harmony always.

Agencies in U. S.

Hawley was the general eastern traffic manager of the S. P., and Neimyer was the general western agent. The P. M. has no agencies in the east outside of New York and Chicago. In Boston the representative of the S. P. acted for the P. M. The same was true of Baltimore and Philadelphia. This was principally on passenger business. The agent at Boston never acted for us in freight matters. Hawley is the only one that acted for us on freight in New York City, and Neimyer in Chicago, and every ticket agent in the United States of every connecting carrier, trunk line, was appointed as our agent. We asked them to act as our ticket agents, and we pay commissions for all the business they secured." Nobody had the P. M.'s freight matters in charge other than these general officers in New York and Chicago. (1666) The P. M. solicited shipments to every point in the United States, by any line by which it could move it.

Contracting freight agents.

Solicited business on all lines.

The S. P. bought its interest in the capital stock of the P. M. in the fall of 1900, after the death of Mr. Huntington. Mr. Huntington died in August, 1900. The P. M. stock purchased by the S. P. was owned by something like 5,600 different stockholders. It was purchased in the street. (1667-1668) From the fall of 1900 the S. P.

Purchase of Pac. Mail stock by S. P.

owned the majority of the capital stock of the P. M., and still owns it. 50 per cent. of the stock of the O. & O. was owned by the U. P., and 50 per cent. by the Pacific Improvement Company. The stock of the Pacific Improvement Company was owned in equal proportions by the estate of Governor Stanford, by the Crocker Estate, by Mr. Huntington, individually, and Mr. Searles of New York. The Searles stock was the Hopkins stock. The portion that was owned by Governor Stanford, Mr. Crocker, and Mr. Hopkins was afterwards, between 1903 and 1905, purchased by the Union Pacific interests. The Huntingtons still retain a one-eighth interest.

Purchase of Pac. Imp. stock by U. P.

At the present time seven-eighths of the O. & O. belongs to the U. P. The S. P. as a corporation never owned any of the stock of the O. & O. The P. M. became the agent for the O. & O. in 1884. "In the Orient, when they first started in, they had a joint agency, and then they split in 1876, and they continued separate agents until 1884, and then the Pacific Mail again took the agency for that company." The agency of the P. M. for the O. & O. has been continuous ever since witness has been with the P. M.

O. and O. stock owned by U. P.

Pacific Mail agent for O. and O.

(1669) At the time witness came to the Pacific Mail in 1893, these were the only two regular lines of steamships going out of San Francisco to the Orient. The Canadian Pacific was operating a line of steamers out of Vancouver. It was competitive with the P. M. It had separate agents in the Orient. There was also the Northern Pacific Steamship Company from Tacoma. That line was also in competition with the P. M. Those are all the lines. In 1899 the Toyo Kaisha Line was put on, running to San Francisco. The P. M. took the agency for that line from the beginning.

Trans-Pacific lines.

(1670) It has since kept that agency. The Standard Oil Company also runs a line out of San Francisco to the Orient. They run oil out and commercial freight home. Then there is The Dollar Steamship Company. The Standard Oil Line runs about a monthly service, which must take four boats. They take no outward freight except oil. They bring back anything they can get hold of. They are not represented in any way by the P. M. in the Orient. The Dollar Company has been running the last three or four years.

Standard Oil line.

Dollar S. S. Co.

(1671) The latter's service is irregular. They load lumber from the Sound and come back with general merchandise, anything they can get in the Orient. They are competitors homeward, and not outward. The Dollar Line has separate agencies in the Orient. The next one is the French Line. It has an arrival in San Francisco every month. They compete with the Pacific Mail on inward business only. They just keep going around to the eastward all the time, keep a line of ships going around the world. They go from San Francisco around the Horn and touch all along the coast of Central America, Mexico, South America, and so on. They have separate agencies in the Orient There is no other line coming inward.

French line.

Going back to the lines operating from the Sound, in addition to the Northern Pacific line, there is the Nippon Nushen Kaisha, run in

Nippon Nushen Kaisha.

connection with the Great Northern. That was established about 1898 or 1899. (1672) That company was not represented in any way by, but has been competitive with, the P. M. in the Orient.

Ocean S. S. Co.

There is a line called the Ocean Steamship Company, which sails from Tacoma or Seattle. They have separate agencies and compete

China Mutual S. S. Co.

with the P. M. both ways. Then there is the China Mutual Steamship Company, which sails from Tacoma or Seattle. They have separate agencies and are competitive with the P. M. both ways.

Dodwell line.

Then there was the Dodwell Line of Portland. That was established in 1896, or 1897, and lasted three years. They had separate agencies from the P. M., and competed with it. (1673) They were preceded

Samuels' line.

by Samuels & Samuels. They were there two or three years. Both companies were competitors of the P. M. Dodwell was succeeded by the O. R. & N. For about three months intervening, there

Graham line.

was a man named Graham had some ships running out of Portland, but witness never considered that a line. He had some ships there, chartered some ships. Witness didn't consider that the Graham line competed with P. M. It was too small and irregular. He, however, regarded the Samuels and Dodwell lines as competitors, also the

Portland and Asiatic.

P. & A. The P. & A. was organized by the O. R. & N. Company. It is still running. Witness is representing that company and has been (1674) since 1904. Prior to that witness had nothing to do with it. It is to-day independent of the P. M. Up to 1904, the P. & A. had agents of their own in the Orient, soliciting traffic and per-

Pacific Mail agent of P. & A. in Orient.

forming the usual duties of agents. To-day the P. M. are its agents. At the port of Nagasaki, which is a large coaling port, practically, Holmes, Ringer and Company represent all steamship lines that enter that one port. Witness reverts to the Great Northern. "Before them came on the Boston Towboat Company, with the Tremont, the Fremont, the Lyra, the Hyades and the Pleiades." In addition to that were the two ships of the Great Northern, the "Minnesota" and the "Dakota." The foregoing constitutes the whole list of ships that are plying between the ports of the Pacific Coast and the Orient, as a regular thing, outside of the tramp boats, at the present time.

San Diego line runs in connection with Santa Fe.

(1675) There was at one time a line of boats proceeding from San Diego—an English shipping firm put the line on, and witness thinks they were on about two years, 1901, 1902, or 1903,—around there. That was a competing line. Witness did not represent them. The line ran in connection with the Santa Fe. There are no railroads other than the Santa Fe reaching San Diego. Witness recalls no conferences between the officials of the Santa Fe and the Southern Pacific or himself about the time this line to San Diego was given up.

(1676) Witness had always tried to get the Santa Fe into business relations with the P. M. He had always told them he could do it better than they could get it done by anybody else. "Every time I saw Paul Morton, I told him he ought to give up his business, that we could do it better than anybody else. He was

very much dissatisfied with the service he was getting at San Diego." Witness understood the line was abandoned because they lost so much money. The agents of the P. M. in the Orient make no arrangements as to the rail line the traffic shall take upon reaching San Francisco. They do not solicit it for any particular route after it gets to this country.

San Diego line abandoned.

(1677) The Southern Pacific and Santa Fe do not maintain separate agencies in the Orient. "Q. Then will you explain, if you can, how the business is divided over there, as to removal to the east after it reaches this country? A. A ship comes in here and we just turn the whole cargo over to the Southern Pacific; and another ship comes in and we turn the whole cargo over to the Santa Fe." Have been doing that the past six months. "Q. * * Prior to six months ago what method did you take to secure a distribution of the east-bound traffic as between the Southern Pacific and the Santa Fe? A. We just loaded the cars put on the dock, and the railroad did the routing. * * * We have no agreement. We simply have an arrangement for the exchange of traffic. The Southern Pacific now gives a much larger proportion of traffic than the Santa Fe does, and we try to give the Southern Pacific as nearly equal percentages as we can offer them, and the same way with the Santa Fe. Q. That is, if the Southern Pacific gives you 75 per cent. of the inward-bound (outward) freight? (1678) A. Yes, sir, we would be in duty bound to give the Southern Pacific 75 per cent. of inward-bound freight. If the reverse of that were to take place, and if the Santa Fe should give us 75 per cent. of the outward-bound business, I would naturally be inclined to give the Santa Fe 75 per cent. of the inward-bound business."

Division of traffic between S. P. and Santa Fe.

The Southern Pacific has never interfered in any way with witness' operation of the steamship company. Witness thought Mr. Stubbs looked upon him in the question of traffic as if he had nothing whatever to do with any incorporation whose stock is owned in the other company by which he (Stubbs) is employed, absolutely as a rank outsider. Prior to six months ago all the freight was turned over to the S. P. "I suppose that they routed it—they had an arrangement by which they routed a certain portion by the Santa Fe, and a certain portion by the S. P., but that was done under our, under the steamship company's understanding." While the California and Oriental Line, the one to San Diego, was in existence, (1679) all of the freight from the P. M. steamships was sent over to the S. P. Witness does not know how the S. P. sent it east. Does not know whether they gave any of it to the Santa Fe or not. "Q. Did they, a year ago, give any of it to the Santa Fe? A. Yes, sir. Q. Did they not give a certain amount of that traffic to the Santa Fe at all times after the San Diego line was abandoned? A. That is my impression. * * * Q. * * * Did you hold out to Mr. Morton an assurance that his line would receive traffic from your ships if he would abandon the San Diego line? A. That stood to reason, that we had to, in making a traffic arrangement of that kind—it

S. P. never interfered with operation of Pacific Mail.

Formerly all the traffic of Pacific Mail was given to S. P.

stood to reason that we had to give him traffic in exchange for the traffic that he gave us."

Report as to amount of tonnage given to Santa Fe.

(1680) Witness made a report to the Santa Fe after the P. M. was in operation with that company, showing the amount of tonnage they had been given. "I kept them posted as to the amount of tonnage that passed over their lines"—that is, tonnage bound from San Francisco to interior points of the United States. Witness never made any stipulation with Mr. Morton as to any definite amount of freight. A report to the Santa Fe of it was made out each month after the business had passed over the dock.

(1681) Does not think any has been made since the fire. The report was sent to Mr. Bissell. Sometimes that freight would run for a month 20 per cent., sometimes it would run 30 per cent., sometimes 17 per cent., sometimes 28 per cent.—it varied from month to month. Santa Fe never found any fault with the amount of freight given it. "Q. They were quite content, were they? A. Well, we were giving them more freight than they were giving us. They were not giving us the same amount— Q. I say, they were content, were they? A. As far as I know. Q. They did not make any fuss about the amount of business they were getting? A. No, sir." There is a difference in the amount of cargo coming over in different ships. If the Santa Fe "is not giving us outward tonnage, we would not turn every second ship over to the Santa Fe; we would regulate that so as to have a fair exchange for the amount of tonnage over to us."

Santa Fe found no fault with tonnage.

Alternate cargoes.

(1682) Have been giving the Santa Fe every alternate cargoes for the past six months, but does not know that he will continue to do that. The change in the method of handling the freight came up in a conversation between Mr. Luce, Mr. Chambers and witness. Mr. Luce is the general freight agent of the Southern Pacific Company. Mr. Chambers is the general freight agent of the Santa Fe. "Q. What was said at that conversation, in substance, by each of you? A. Well, I believe that I raised the point that if we turned the freight—if we turned the freight over to the Southern Pacific Company the question immediately arose in regard to the Santa Fe handling the freight. We had had considerable trouble on the dock in regard to getting Southern Pacific cars, and I think I threatened that unless I had less trouble in getting cars from the Southern Pacific, I would shove all the freight over the Santa Fe; if the Southern Pacific didn't give me any cars, I would send the freight over the Santa Fe, because the freight was congested on the docks there." The question was discussed and it was concluded best, instead of apportioning out of the ship any special cargo, for instance, a cargo that might be served best by the Santa Fe lines, to try to aggregate that cargo out of the ship, that we would turn over the whole cargo to the Santa Fe, and let them bill (1683) it out as they saw fit, and then turn over the whole net cargo to the Southern Pacific, and let them bill it out as they saw fit. "Q. Mr. Schwerin, did you three gentlemen agree on that?

Discussion as to apportionment of traffic between S. P. and Santa Fe.

A. We did. Q. And you have since carried out that agreement? A. As far as I know." The P. M. did not adopt any new policy as to the publishing of rates.

(1684) To the best of witness' knowledge, rates from San Francisco to eastern points in the United States, over the Santa Fe, are the same as rates to the same points over the Southern Pacific. All the trans-continental and all the trans-Pacific lines are billing at the same rates. The principal commodities the P. M. brings from the Orient are tea and matting. Some rice is imported, locally, and silk is also imported; also curios—but the great bulk of the commodities are tea and matting.

Rates the same over Santa Fe and S. P.

In the Orient the steamship line's bill of lading is issued, which simply shows that the traffic will move via the port of San Francisco. The bill of lading does not name the American railroad that carries it to the east. It is reserved to the steamship line to determine there, or at any time it pleases, just how the freight shall move, once it reaches the port of San Francisco.

Through bills of lading.

(1685) Prior to the abandonment of the San Diego Line, the Southern Pacific had all the inward business of witness' ships. After the Santa Fe freight began to go through San Francisco, that company began to get a percentage of the inward business, which varied from 17 to 20 per cent. and higher than that sometimes. That division of traffic embraces the Japanese Line, the O. & O., and the P. M. When witness turns over to the Southern Pacific its share of this business, he has nothing to do with routing it to the east. That is left to the Southern Pacific.

Division of traffic embraces the Japanese line, the O. and O. and the P. M.

Witness would object to the Atlantic seaboard business moving via the Sunset Route. "We are all competing for the rapidity with which we deliver tonnage from the Orient destined for the Atlantic seaboard, and we believe that the Central and Union Pacific and Chicago & Northwestern can make better time than the Sunset—we want that all-rail route."

Better time made by C. P. U. P. and N. W. line.

(1686) That has been the route since witness can remember. Some of the teas used to go over the Rio Grande. Witness understands that teas are still going over the Rio Grande. It is routed that way by the Southern Pacific. If the shippers or the consignees have any voice in the routing of the traffic after it is turned over to the railroads, they do not exercise it. The traffic that goes over the Portland and Asiatic takes the O. R. & N., the Oregon Short Line, and U. P., and witness supposes, the Northwestern, (1687) After the freight reaches the junction of the Union Pacific, witness does not know which way it goes. Witness prefers to have inward business via San Francisco go east over the Northwestern because there is an Asiatic fast freight on that line. "As far as the Portland tonnage is concerned, with the exception of silk, silk piece goods, the rougher or common class of goods that go by tramp steamers rather than by mail and dispatch steamers, and excluding this local Oriental business which we have largely here in San Francisco, the general

Asiatic fast freight on Northwestern.

tonnage is about the same," (as that which goes through the San Francisco gateway).

Oriental traffic brought down from Portland by O. R. & N. boats.

Witness remembers that it was customary when the O. R. & N. was independent of the S. P. but had boats running to the Orient in connection with the former, for the O. R. & N. boats from Portland to San Francisco to bring down to San Francisco Oriental traffic that came in by Portland. (1688) That was done without extra charge, but the traffic was very small in amount. The charge between Portland and San Francisco is pro-rated between the Portland and Asiatic Line and the San Francisco and Portland Line. The same rates apply (from the Orient) to San Francisco via Portland as apply to San Francisco direct. The San Francisco and Portland Line has no corporate connection with the Portland and Asiatic.

(1689) Witness explains the method of pro-rating the local charge on Oriental shipments from Portland to San Francisco.

Pacific Mail Panama route.

(1690) The Pacific Mail has a Panama line. It runs to the ports of Manzanilla and Mazatlin, San Blas, Acapulco, Coos, Champerico, San Jose, Acajutla, La Libertad, La Union, Corinta, and Ancon. The last is the new name for the port of Panama. The P. M. brings out commodities from the east by way of Panama. Witness has no boats on the other side of the Isthmus. In connection with the trade that comes around by Panama the P. M. operates with the United Fruit Company from Gulf points and with the Panama Railroad line—from New York—the Panama Railroad Company's steamships—and with the Hamburg-American Packet Company from New York to points other than American, and with all the trans-Atlantic lines out of Colon. The P. M. accepts their shipments from Europe that way, brought from trans-Atlantic points and then on down from New York and across the isthmus to all the points along the Central American and Mexican coast that he has named. There were six ships in that trade when witness first became connected with the P. M., running between Panama and San Francisco. (1691) Is running nine there now. Has been running nine about five years. The P. M. is competitive with the rail lines on business from New York to San Francisco, and always has been. The present tonnage of the ships as compared with the average tonnage of ships that were running on the line in 1893, (1692) has increased about 33 1-3 per cent. It was about 15,000 tons and is now about 20,000 tons. The P. & A. charters its ships from the Hamburg-American Packet Company. The O. & O. charters its ships from the White Star Company. Mr. Mahl was in error in testifying that the O. & O. had gone into liquidation.

Pacific Mail competes with rail lines.

P. & A. and O. & O. lines charter their ships.

Pacific Mail owns its own boats.

"Magnolia" and "Manchuria."

(1693) The P. M. owns all the boats heretofore enumerated by the witness as operated by the Pacific Mail. In addition it operates the "Mongolia" and "Manchuria." As far as witness knows those two boats belong to E. H. Harriman, personally. Mr. Harriman is President of the Pacific Mail, and witness acts under his instructions. There is a charter party covering these two ships (1694) running between the P. M. and E. H. Harriman. The P. M.

has been operating those boats since 1904. The arrangement for the leasing or chartering of these boats was made with Mr. E. H. Harriman.

(1695) Witness represented the P. M. in the negotiations, and recognized Mr Harriman as acting personally. The rental for the ships varied. The first year it was in the neighborhood of $20,000.00 a month, and it was gradually increased until it was $30,000.00 a month, for each ship. "In the operation of a new ship, the expenses are always heavier than after you get the ship running, and also the expenses are heavier to introduce a new ship. So I contended that the first—the first six or nine months of the charter, the charter should be less than what it would be afterwards. So the final charter—we are paying, the last rate that we are paying, is $30,000.00 a month. But I don't just remember how the terms varied from $20,000 to $30,000, and exactly what period that covered." The rental is remitted to the controller, Mr. Mahl.

(1696) Witness is president of the O. & O. Referring to the Panama ships, they are the property of the P. M. except from time to time ships are chartered on that line, for extra service. Panama ships. (1697) The San Francisco & Portland Steamship Company was organized in 1904. Prior to that time witness had nothing to do with the running of the ships of that line. Up to that time they were known as the ocean division of the O. R. & N. "Q. Those ships made the connection of the O. R. & N. with San Francisco? A. Yes, sir; I presume so." The O. R. & N. are the stockholders of the San Francisco & Portland Steamship Company. The ships were chartered by the Steamship Company from the O. R. & N. Company. There is now only one ship on that line, the "Columbia," about 1,800 tons capacity.

(1698) When witness took charge of that line there were two boats on it, the "Elder" and the "Columbia." Knows nothing about the history of the Company prior to the time he took charge. The "Elder" was lost at the Columbia River about two years ago. The Company immediately bought the "St. Paul" and fitted her up and put her on the line, a much better ship than the "Elder." She was lost a year ago last summer on the coast. Then the "Barracouta" and "Costa Rica" and the "Aztec" and the "Spokane" were chartered. The "Barracouta," "Aztec" and "Costa Rica" belonged to the P. M. There is in the service there now the "Columbia," "Costa Rica," and "Aztec." They have been having a very serious time with that line this summer. It takes its beginning from the time of the earthquake. Boats of San Francisco and Portland S.S. Co.

(1699) Witness details the troubles experienced. There is now a five days' service for the two passenger ships between Portland and San Francisco and the "Aztec," carrying freight only, runs as fast as they can load and discharge. "She would take 21 days to make the round trip." It takes about five days to go up and down, that is, five days up and five days down, and the balance of the time is taken in the difficulties of discharging the ships in port. The Service between Portland and San Francisco.

passenger ships are run on a schedule—to Astoria, about 48 hours. They are about 4 or 5 hours going up the Columbia and the return is about the same. Witness states they have been trying very hard to purchase two five thousand ton ships for that line, but have not been able to get a satisfactory price yet.

Increase in rates.

(1700) There was an increase in rates on that line, made effective this month. Roughly speaking the increase covers southbound flour and feed-stuffs, and northbound canned goods, heavy wagons, automobiles, sugar. Does not know that the Southern Pacific raised its rail rates to and from Portland at about the same time that the steamship rates were raised, but witness states that they have always raised rates when the steamship line did so.

(1701) "COMR. LANE. Was there a consultation between yourself and any of the railroad men respecting the raising of rates before it was done? A. We had a differential against the railroad, and I have discussed it with the Pacific Coast Steamship Company, and our rates are governed very largely by their water rate; and I have discussed it with the railroad company. And there has been general discussion as to whether the rates were too low, and whether they ought to be advanced or not." It was decided to advance the rates in November or December. Witness discussed the increase with Mr. Luce, general freight agent of the Southern Pacific. "COMR. LANE. It was after that conversation, subsequent to that conversation with Mr. Luce, that you made your advance? WITNESS. Well, it would not have made any difference whether they made an advance or not, we would have advanced our rates, because the rates were unremunerative. The cost of labor had advanced so, our stevedoring charges had advanced over one-third, and it was costing us as high as 76 cents a ton to take freight out of the ship, and we were getting $2.50 a ton for it." The differential between the steamship line and the railroad witness thought was about 60 cents a ton. "It was absolutely immaterial to me whether the railroad advanced the rate or not. I said we would advance our rates, and the Pacific Coast Steamship Company said they would advance their rates. They were in the same position we were. There had been an advance in the price of fuel and supplies, and an advance in the pay of the officers, and in the crews' wages; and, all together, we were in a very bad shape."

Cause of advance in rates.

(1702) The steamship line has advanced rates in cases where the Southern Pacific did not do so. Witness has testified that the S. P. customarily advanced the rates when the steamship line did—that is the general rule; but he thinks there are cases where they have not done so. If the S. P. advance their rates the steamship line will advance theirs and he supposes if the latter advanced their rates, the former would advance theirs, though there is no understanding between them upon that point. As a matter of fact, in his study of the traffic between San Francisco and Portland, which is largely a traffic that moves from San Francisco to Portland, the

No understanding about rate changes.

S. P. is not a competitor. The steamship line gives so much better service than they can, that the former gets their business.

(1703) The steamship line gets the freight largely unsolicited, and it is not able to handle all the freight that is offered. It makes better time to Portland than the rail line. "A man can order his groceries in San Francisco, and barring those accidents that we have had, he will know just when he will get his goods in Portland." Transportation by rail has been very much disturbed lately. Does not consider the Southern Pacific a competitor at the present time, on account of the congested amount of freight, but if the market was lean of freight, he would consider they were competitors. Steamship lines solicitors would compete against S. P. for every pound of freight they can get. Does not mean to testify that under ordinary conditions they are not competitors.

Steamship line makes better time to Portland than the rail line.

(1704) The south-bound traffic is heavier than the north-bound. The north-bound ships have been going out with light tonnage. There is an agency in San Francisco for the San Francisco and Portland Steamship Line entirely separate from the P. M. It is under the charge of witness. The Pacific Mail runs no boats to Alaska, or to Puget Sound points. Has been unable to get two additional boats for the Portland and San Francisco Line, because of the difference of price between the owner and himself.

South bound traffic heavier than north bound.

(1705) Cannot buy a foreign made ship because a foreign bottom is not permitted to operate in coastwise trade. The supply of American made ships is very small. The traffic south-bound is mostly mill products,—flour, feed, bran, and oats, and shakes, shingles and laths. Most of it originates in Portland and witness supposes along the line of the O. R. & N. Those boats do not handle any traffic coming from the east. The north-bound traffic ordinarily is canned goods, sugar, salt, cement—almost entirely products of California. "Q. Is it not true, Mr. Schwerin, that as a rule, generally speaking, railroads are not equal to competing with ocean carriers; that is, coastwise carriers? Is that not true on the Atlantic? That is, I mean from seaport to seaport; I am not speaking of the ordinary river steamers, but of coastwise steamers. A. I think they get the first call on the traffic." That is true as to time and facilities.

Can not buy foreign made ship.

Steamships have the advantage on business from seaport to seaport.

(1706) For instance, the Old Dominion Line has the bulk of the traffic between Norfolk and New York City, and the Morgan and Mallory Steamship lines have the bulk of the traffic between New York and New Orleans and Galveston. Inquiries as to the basis of the differential between rail and steamship lines, San Francisco to Portland. (1707) The Pacific Mail has no steamers on the Atlantic. It used to operate a line from New York to Panama, and the Panama Railroad Company would not allow it to continue there, in connection with the Panama Railroad. That was discontinued late in the '90's. The Cosmos Line and the French Line are also operating between San Francisco and Panama, and South American and Central American ports. The Pacific Mail Company has had severe com-

Cosmos and French line also operating between San Francisco and Panama.

petition between San Francisco and the southern ports ever since witness has known it.

California and Oriental

(1708) The California & Oriental Line, which sailed from San Diego and went out of business in 1902 or 1903, was supposed to have a steamer first every month, and later they contemplated having two steamers a month, or a steamer every three weeks. Witness does not remember which. The P. M. had a steamer from San Francisco at that time about every nine days. The Atchison opened the steamship line from San Diego before it got its rails into San Francisco. Witness began his efforts to get the business of the Santa Fe Company almost from the time he became connected with the Pacific Mail. "Every time I saw Mr. Morton I would joke him about it, or talk earnestly to him, or any way to try to persuade him to give me the business." The last talk witness had with Mr. Morton about it was in the Waldorf in New York, and it was long after the California and Oriental Line had gone out of business. Witness had no arrangement with Mr. Morton until some time after the San Diego line went out of business.

Santa Fe abandoned boat line without agreement.

(1709) "COMR. LANE. Did they go out of business in view of any conversation that you had with Mr. Morton or the Santa Fe people? WITNESS. Absolutely not." It was not in pursuance of any agreement or understanding that they should get a share of the business that they put that steamship line out of business. Witness understood from Mr. Morton and from the agent of the line, at San Francisco, that they were losing considerable money—the line was very unprofitable. "Q. Then after that line was discontinued, you arranged with the Santa Fe to get some of their business, and to reserve space for them on your ships out-bound, so as to use their freight? A. We had to do that. We had to agree to let them have a certain amount of space on the outward bound ships, otherwise they would not have been able to contract it, and we would not have known what they would want to carry, how much." In return for that witness agreed to give them some portion, it varied above and below 25 per cent., but he tried to give them about 25 per cent. The Santa Fe has not given the Pacific Mail as much as that company has given the Santa Fe.

Formerly could make rates without consulting rail lines.

(1710) He doesn't cut the Atchison off, because he wants to have an argument on his side to make them get after freight and aid the Pacific Mail in competing with the northern lines who pull freight that would naturally go to the south. All the freight originates in competitive territory. All the freight the Pacific Mail carries could just as well go out from the north. There was a time when witness could make a rate from the Orient to any point in the United States, without consulting the rail lines at all. Now, under the Interstate Commerce Commission, thirty days' notice has to be given, and witness is entirely out of competition so far as the Orient is concerned, because the Suez Line can make any rates they please, without notice. The Pacific Mail publishes a through rate from Hong Kong to Chicago.

(1711) Published rate does not show the divisions. "We can arrange the division as we may desire." The Pacific Mail has the same rate with the Atchison that it has with the S. P., the same division. Witness thought he could publish a rate to San Francisco, and a rate upon import business from San Francisco to Chicago. The Suez competition is principally to Atlantic seaports, and the Pacific Mail is at a disadvantage in respect to that. The Suez competition is composed of foreign steamships operated very cheaply and as tramps. (1712) There is no written contract between the Pacific Mail and Atchison. It is merely an understanding. It was made in order to increase the business. Witness contemplated putting on the "Korea" and "Siberia."

Same division of rate with Santa Fe as with S. P.

(1713) Witness was trying to get business for the Steamship Company. Didn't consider the S. P. at all. Mr. Harriman has never made witness a single suggestion on that subject. When it comes to the division of rates, Mr. Harriman has nothing to say. It is fought out between Mr. Stubbs and witness entirely. Divisions have not changed since 1893 and 1894, when the S. P. was not interested in the Pacific Mail. Cannot imagine any reason why Mr. Harriman should wish the Pacific Mail worked in the interest of the S. P. against its own interest.

In getting business for the steamship Co. does not consider the S. P. at all.

(1714) The Atchison has no rail connection with the docks of the Pacific Mail, and any freight to or from its docks must be passed over the trackage of the Southern Pacific to reach the former's tracks. In testifying that all the traffic was turned over to the Southern Pacific, witness meant that the Atchison would turn their cars over to the Southern Pacific, to be again distributed over to the Santa Fe, to their own line. "On the inward bound freight, we would bill direct to the Santa Fe for our advance charges for freight routed by the Santa Fe, and the same way to the Southern Pacific." On the outward freight the Santa Fe and S. P. would collect direct from the P. M. for their respective proportions of the through rate. It was not left to the S. P. to decide what should go to the Atchison, but this was determined by the P. M.

Billing and collections.

(1715) The rental paid for the use of the "Manchuria" and "Mongolia" was reasonable and fair to the P. M. At the time the present rates or divisions with the Southern Pacific were put in by agreement between Mr. Stubbs and witness, the Southern Pacific Company had no interest in the Pacific Mail. Hawley in New York and Neimyer in Chicago were appointed agents in 1894 and 1895. The Pacific Mail was working with the Southern Pacific as a connecting line. "There were certain questions that would come up from time to time that required quick action in the east, in competition for traffic, and I solicited to have those people appointed there, so they could communicate direct with me, and get our authority as to what we were willing to do at the steamship end of it, and they acted there entirely under that understanding."

S. P. had no interest in Pacific Mail when rates were made.

Sailings of Pacific Mail.

In 1900 and 1901 the sailings of the Pacific Mail from this port were about the same as they are now, that is, about every nine days. "Q. How often were the sailings from Puget Sound at that time? A. There was one, at that time there was really one, what we considered one regular line there which had sailings that were absolutely definite. The Canadian Pacific and ourselves consider that we run those lines on railroad train service. That is, we know just exactly what ship is to come into port, and exactly what day she is to leave, and they carry mails. Outside of the Northern Pacific Steamship Company, that operated at that time from Tacoma, I think the Canadian Pacific and ourselves were the only ones that maintained an absolutely regular schedule, although they advertised a schedule possibly of dates of sailings."

Maintained regular schedule.

Sailings of tramp steamers.

(1716) Sailings from the Sound were very frequent. There were a great many tramp steamers coming in there under the guise of regular lines. Taking into consideration all the lines from the Puget Sound, their sailings were more frequent than witness'. The steamers of the P. & A. were at first to sail once a month. They did not anywhere near maintain that schedule. They were operating three steamers, carrying freight only. Witness believes they did carry some inward Asiatic passengers. There was no other line out of Portland.

Sailings of P. & A. line.

P. & A. established to take care of the flour and grain business.

(1717) Traffic of the P. & A. is almost entirely flour. That line was established to take care of the flour and grain business that originated on the lines of the O. R. & N. That line has never been able to compete with the San Francisco and Puget Sound lines for business from the Atlantic Seaboard. Witness gives the reasons therefor, as follows:

"A man who ships from the East wants to know when his freight is going to leave the seaport through which the freight passes, and he will figure to send his freight over by rail and reach the port so as to go by a certain steamer. We maintain our schedule some five, six, seven to eight months ahead of our sailings, so that a shipper in correspondence with the Orient can tell his correspondent what freight he is going to get a long time ahead. If a man puts his agreement into the form of a contract, he would contract that freight to be delivered by a certain steamer. It is to maintain that traffic, hold that traffic, that we have tried so hard to maintain our schedule. On the Portland and Asiatic line, they get bunched up sometimes in Portland, and then again they get bunched up in the Orient. They advertise a steamer to sail on a certain date, and she may sail two or three weeks later than that. The result was that the shipper would be continually growling about his freight, or, there might be some delay on the railroad, and the freight would not get in until the steamer had left, she might have gotten out at near her schedule, and then there would not be another steamer at all for a month, and meanwhile that freight would lie in Portland for a month waiting for a steamer; whereas in San Francisco, in case he missed one steamer, we had another steamer

Reasons why P. & A. cannot compete for business from East.

in 9 days, and that would take the freight right forward. That was the superiority of our line over the Portland and Asiatic, so far as the shippers are concerned, and what they demand in the handling of this Oriental freight."

(1718) The Portland and Asiatic Steamship Company has been operating at a decided loss. Schwerin Exhibit No. 1 is a statement of receipts and expenses of the P. & A. for the year ending June 30th, 1902, and for each subsequent year to and including June 30, 1906. It shows a loss for each year, except 1905, during which the Japanese-Russian War was in progress. It shows a loss for the entire period of $283,749.29.

P. & A. operated at a loss.

(1719) The line is maintained at a loss, because "if we don't maintain the line, Mr. Wilcox, who has the Portland Flouring Mill, will be compelled to close that mill at the port of Portland, and the people of Portland would very seriously object to having that enterprise destroyed there and moved to Puget Sound. He has another mill at Dayton upon which it would have some effect. Then all the grain that originates along the line of the O. R. & N., would go to Puget Sound Mills, and mills along the lines tributary to Puget Sound, and be milled there, and shipped to the Orient." The Wilcox mill has doubled in capacity in the last three years.

Reasons for maintaining it.

(1720) The O. R. & N.'s object in maintaining this line of steamers at a loss is to hold the traffic to its rails. Without the support of the O. R. & N. in that way could a steamship line of this character be maintained out of Portland. As a steamship proposition it is not practicable. It could not be made so, even if you ran a regular schedule, put on more boats up there and did a regular competitive business with San Francisco. The more steamers you put on there, the more money you will lose. "If the San Francisco line was dependent upon through freights alone they would go out of business. There is not a steamer out of the port of San Francisco to-day that we could run if it were merely a question of freight, I mean trans-continental freight. But we have here inward and outward passenger business, and we also have a large passenger business between the Orient and the Hawaiian Islands. It is a combination of the freight and passenger business that permits this line to run, although this year the Pacific Mail Line has lost nearly half a million dollars here in this port. * * * We have mentioned a fairly regular schedule out of Portland. The only time that our schedule has varied we are running four steamers—and in reality it has been at the earnest solicitation of the Portland shippers that we have made the divergences that have caused the irregularity of the schedule, and have sent one (1721) of our steamers, instead of sending it over to Hong Kong or Moji, at their earnest solicitation, to Kadodate or Newschwang, or some other place out of the regular line, and as those vessels are freight carriers and run to maximum speed, it is impossible, when making those divergences, to get them back into the schedule again without some little lapse. We tried to maintain a steamer every three or four weeks. Now, in Portland, you

San Francisco S. S. lines could not run if it were not for the passenger business.

Cause of disarrangement of boat schedules on Portland line.

have had an illustration there of the "Oregonian," lying four or five days at St. Helena trying to go up the river to discharge a cargo. And while she is lying there, she ought to have been up there and discharged. The "Nikomedia," again, appears up there off Astoria, and we have worked in Portland day and night to keep those ships on schedule. And the same way in the Orient, we have turned them around in Hong Kong in 48 hours, unloaded and loaded in 48 hours, working day and night and we come over to Portland and we can't get in on account of the bar. Then we make up that time again at Portland and go down the river and lie there 7 days trying to get over the bar again. * * * We not only have the difficulty of not getting this passenger business, but we have physical difficulties to contend with on the Portland line." The P. & A. ships are modern freighters.

Capital stock of Pac. Mail.

(1722) Business originating in the Orient and going over to Portland via the P. & A., and then to San Francisco, was very trifling in volume, being practically nothing. The capital stock of the Pacific Mail is $20,000,000.00. It pays dividends indirectly. It has just finished this last year paying for the "Siberia" and "Korea" out of earnings. It would run into some $1,300,000 in the last four years, witness thought. The Pacific Mail does not pay the insurance on the "Mongolia" and "Manchuria."

Insurance.

(1723) The insurance premium on both ships amounts to about $120,000.00 per year. The owners pay for all repairs and all the maintenance of the ships. The P. & A. cannot compete with San Francisco on business originating on the Atlantic seaboard, nor on business in the Orient and destined to eastern points in the United States. "It is the same difficulty here. Kobe is one of our principal ports, and sometimes in the port of Kobe there are four different lines of express steamers, and we have a pretty hard time getting any freight on a tramp steamer against four express steamers, for instance, the 'Minnesota' might be there and the 'Fremont' might be there, and the Canadian express steamer in there, and perhaps one of our express steamers in there."

P. & A. cannot compete on business originating in Orient.

Small cargoes on inbound voyage.

(1724) The P. & A. boats bring back some merchandise from the Orient, but do not bring back anything like full cargoes. The Pacific Mail boats bring back full cargoes sometimes. They usually do at certain periods of the year. High grade goods all move by the express steamers, and not by tramps, but as to mattings, teas and general curios, the agents in the Orient representing the P. M. and the P. & A. work just as hard for the one line as the other. "Shippers in the Orient will almost invariably ship by the first steamer, and they will give the preference to the better steamer." (1725) Witness' agents in the Orient solicit just as actively for the P. & A. as they do for the Pacific Mail, and the O. & O. or the T. K. E. The P. & A. pay the Pacific Mail a commission for transacting their business, the same as the Pacific Mail pay any commercial house that transacts business for it. Witness describes the manner of securing freight for the P. M. and P. & A. in the Orient.

Pacific Mail gets commission from P. & A.

(1726) "Q. There is no competition between the Portland & Asiatic, the Occidental & Oriental, the Pacific Mail, and the Japanese line, controlled by the Pacific Mail Steamship Company, but they are all four lines competing against the Great Northern and Canadian Pacific and other lines? A. Well, you might describe it that way." The Pacific Mail takes shipments from the Orient for Los Angeles. They are trans-shipped at San Francisco by the Pacific Coast Steamship Company.

Testimony of Mr. Stubbs, given in an investigation in Chicago, read, in which he stated that Atchison would abandon the San Diego line as part of an understanding that the Pacific Mail should be used. (1727) Mr. Stubbs did not think there was an agreement, nothing more than an expectation of that result. Witness knew nothing of any such negotiations. (1728) Witness has always believed he had a right to make arrangements between the Pacific Mail and the Atchison that way for the benefit of San Francisco and the individual lines. Felt that he was building up traffic. There is now a larger volume of traffic coming in, and he wanted the assistance of the Atchison against the fierce competition for outward traffic. Doesn't want the traffic coming into or going out of California to be divided between two ports. Witness' interest is in the port of San Francisco. Operates in connection with the Hawaiian Line, and also the Panama route. (1730) The California & Oriental line had been abandoned before the understanding between the Atchison and Pacific Mail was reached.

Trying to build up the port of San Francisco.

(1731) Witness frequently discussed traffic matters with S. P. officials, and asked them to help him build up the port of San Francisco. Had frequently discussed with Mr. Stubbs the advisability of handling Santa Fe traffic for the benefit of the steamship line. (1732) Ever since the first year of the operation of the California & Oriental, witness has sought to secure the business of the Atchison as a connecting line.

CHICAGO, ILL., MARCH 16, 1909.

(1734) J. A. WENTZ.

Wentz.

Lives at Chicago, Ill. Retired from business. A railroad man all his life. (1735) For fifteen years prior to Jan. 1, 1908, was commercial agent of the Rock Island at Chicago. For thirteen years prior to that was general agent at Kansas City. For one year prior to that was in business for himself. For four years prior to that was general freight and passenger agent of the Cairo & St. Louis Railroad. While soliciting coast business at Chicago, the business at first generally moved via the U. P. from the Missouri River; sometimes by the N. P. and G. N. After the Rock Island built its extension from the Missouri River west, El Paso was the preferred route. Frequently, however, he was obliged to give up business to the U. P. at Omaha, and sometimes to the Atchison,

Chicago. Traffic man.

Worked coast business for Rock Island through its different gateways.

have had an illustration there of the "Oregonian," lying four or five days at St. Helena trying to go up the river to discharge a cargo. And while she is lying there, she ought to have been up there and discharged. The "Nikomedia," again, appears up there off Astoria, and we have worked in Portland day and night to keep those ships on schedule. And the same way in the Orient, we have turned them around in Hong Kong in 48 hours, unloaded and loaded in 48 hours, working day and night and we come over to Portland and we can't get in on account of the bar. Then we make up that time again at Portland and go down the river and lie there 7 days trying to get over the bar again. * * * We not only have the difficulty of not getting this passenger business, but we have physical difficulties to contend with on the Portland line." The P. & A. ships are modern freighters.

Capital stock of Pac. Mail.

(1722) Business originating in the Orient and going over to Portland via the P. & A., and then to San Francisco, was very trifling in volume, being practically nothing. The capital stock of the Pacific Mail is $20,000,000.00. It pays dividends indirectly. It has just finished this last year paying for the "Siberia" and "Korea" out of earnings. It would run into some $1,300,000 in the last four years, witness thought. The Pacific Mail does not pay the insurance on the "Mongolia" and "Manchuria."

Insurance.

(1723) The insurance premium on both ships amounts to about $120,000.00 per year. The owners pay for all repairs and all the maintenance of the ships. The P. & A. cannot compete with San Francisco on business originating on the Atlantic seaboard, nor on business in the Orient and destined to eastern points in the United States. "It is the same difficulty here. Kobe is one of our principal ports, and sometimes in the port of Kobe there are four different lines of express steamers, and we have a pretty hard time getting any freight on a tramp steamer against four express steamers, for instance, the 'Minnesota' might be there and the 'Fremont' might be there, and the Canadian express steamer in there, and perhaps one of our express steamers in there."

P. & A. cannot compete on business originating in Orient.

Small cargoes on inbound voyage.

(1724) The P. & A. boats bring back some merchandise from the Orient, but do not bring back anything like full cargoes. The Pacific Mail boats bring back full cargoes sometimes. They usually do at certain periods of the year. High grade goods all move by the express steamers, and not by tramps, but as to mattings, teas and general curios, the agents in the Orient representing the P. M. and the P. & A. work just as hard for the one line as the other. "Shippers in the Orient will almost invariably ship by the first steamer, and they will give the preference to the better steamer." (1725) Witness' agents in the Orient solicit just as actively for the P. & A. as they do for the Pacific Mail, and the O. & O. or the T. K. E.

Pacific Mail gets commission from P. & A.

The P. & A. pay the Pacific Mail a commission for transacting their business, the same as the Pacific Mail pay any commercial house that transacts business for it. Witness describes the manner of securing freight for the P. M. and P. & A. in the Orient.

(1726) "Q. There is no competition between the Portland & Asiatic, the Occidental & Oriental, the Pacific Mail, and the Japanese line, controlled by the Pacific Mail Steamship Company, but they are all four lines competing against the Great Northern and Canadian Pacific and other lines? A. Well, you might describe it that way." The Pacific Mail takes shipments from the Orient for Los Angeles. They are trans-shipped at San Francisco by the Pacific Coast Steamship Company.

Testimony of Mr. Stubbs, given in an investigation in Chicago, read, in which he stated that Atchison would abandon the San Diego line as part of an understanding that the Pacific Mail should be used. (1727) Mr. Stubbs did not think there was an agreement, nothing more than an expectation of that result. Witness knew nothing of any such negotiations. (1728) Witness has always believed he had a right to make arrangements between the Pacific Mail and the Atchison that way for the benefit of San Francisco and the individual lines. Felt that he was building up traffic. There is now a larger volume of traffic coming in, and he wanted the assistance of the Atchison against the fierce competition for outward traffic. Doesn't want the traffic coming into or going out of California to be divided between two ports. Witness' interest is in the port of San Francisco. Operates in connection with the Hawaiian Line, and also the Panama route. (1730) The California & Oriental line had been abandoned before the understanding between the Atchison and Pacific Mail was reached.

Trying to build up the port of San Francisco.

(1731) Witness frequently discussed traffic matters with S. P. officials, and asked them to help him build up the port of San Francisco. Had frequently discussed with Mr. Stubbs the advisability of handling Santa Fe traffic for the benefit of the steamship line. (1732) Ever since the first year of the operation of the California & Oriental, witness has sought to secure the business of the Atchison as a connecting line.

CHICAGO, ILL., MARCH 16, 1909.

(1734) J. A. WENTZ.

Wentz.

Chicago. Traffic man.

Lives at Chicago, Ill. Retired from business. A railroad man all his life. (1735) For fifteen years prior to Jan. 1, 1908, was commercial agent of the Rock Island at Chicago. For thirteen years prior to that was general agent at Kansas City. For one year prior to that was in business for himself. For four years prior to that was general freight and passenger agent of the Cairo & St. Louis Railroad. While soliciting coast business at Chicago, the business at first generally moved via the U. P. from the Missouri River; sometimes by the N. P. and G. N. After the Rock Island built its extension from the Missouri River west, El Paso was the preferred route. Frequently, however, he was obliged to give up business to the U. P. at Omaha, and sometimes to the Atchison,

Worked coast business for Rock Island through its different gateways.

after they built through. Line to Denver was built before that to El Paso, and witness worked Denver line before the last mentioned line was built. Business through Denver moved via the Rio Grande, and also the U. P. It all went over the S. P. from Ogden. Worked Portland business any way he could; G. N., N. P. and U. P.

(1736) Worked quite a little business to Portland by the Shasta route. Prior to amalgamation, Neimyer represented the S. P., and Knight, the U. P. Didn't know which way S. P. tried to route business; thought both ways. Knew it went both ways. S. P. reached Chicago by way of New Orleans, over the Illinois Central generally. Thought that route was worked actively for business both ways. Knight sought to get business by Omaha. Thinks agents were active in their solicitation, and the Rock Island lost business that was taken from it by way of New Orleans. (1737) Doesn't know whether any change took place in Neimyer's efforts to work coast business after the consolidation. Neimyer became agent of both lines. Remembers a fast freight train run by the Illinois Central to New Orleans, on which coast business moved. Thinks the U. P. and S. P. were right up to date in their equipment. Had large furniture cars. Witness thought that they came into vogue about 15 or 20 years ago. To be able to furnish large equipment is an important item.

S. P. and U. P. solicitation.

U. P. and S. P. were up to date in their equipment.

(1738) Competitive traffic is secured largely by the agents' personality. Thinks if they were all done away with, one road would be as well off as another. The road which kept the solicitors, however, would be better off than the others that didn't. They are useful to shippers in furnishing information and in the settlement of claims; also in securing equipment. Doesn't think the S. P. had a representative at Kansas City. Thinks they left the solicitation of that business to their connections. (1739) The following lines solicit business for the Pacific coast: The C. B. & Q., the C. M. & St. P., the C. & N. W., the Atchison, the Mo. P., the Chicago & Alton, the Chicago Great Western, the R. I., the Wabash. Not sure about the M. K. & T. and the Iron Mountain. Doesn't think the competition of the Iron Mountain in connection with the T. & P. ever gave the Rock Island much trouble.

Lines which solicit coast business

(1740) Doesn't think the Iron Mountain and T. & P. furnished the shortest line from Chicago to El Paso. Possibly the shortest from St. Louis, but not sure. For a long time the S. P. was the only outlet for the D. & R. G. and the U. P. Missouri Pacific and Burlington, as well as the Rock Island, turned over their coast business to the U. P. The Rock Island had two lines, one by way of El Paso and one by way of Denver. (1741) Witness worked both those lines. It didn't occur to him that he was working competing lines. Tried to get the longest haul possible, that which would give the best earnings, which was usually by El Paso. Frequently, however, gave up business at Omaha, where he was obliged to. The S. P. did the same thing. That is the rule with railroads.

Rock Island had two lines one via El Paso and the other via Denver Didn't consider them competitive.

All the lines had solicitors at Chicago, and the solicitation of California business by the Rock Island, the Burlington, the Mo. P., the St. Paul, the Northwestern, the C. & A., inured ultimately to the benefit of the S. P. The shipments witness has testified about as having gone by New Orleans, were generally for Los Angeles. Couldn't put his finger on any particular shipment, but thought some had gone by New Orleans to San Francisco.

Solicitation of various lines inured to the benefit of S. P.

(1742) Thought the S. P. did work largely with the Rock Island and by El Paso, but is also under the impression that they solicited by way of New Orleans. Witness should guess there were 30 or 40 different lines which he could form by joint tariffs from Chicago to California points. Would consider the C. & A. one of them. (1743) Doesn't remember any competition for business through Denison to Houston over the H. & T. C. Never heard of the Morgan railroad from New Orleans to Lafayette, La., being used on Pacific coast business from Chicago, although it might have been. Knows that that road is a part of the S. P. system. There might have been 40 or 50 different routes between Chicago and Pacific coast. Most of them were soliciting traffic as long as witness was in business. Never tried to work any business to California by way of Portland. Thinks he worked some business to Portland by way of El Paso. Wouldn't work it that way as against the Short Line via Denver. "There might have been some reason for it on the part of the shipper wanting it to go that way." Believes the rates applied that way, but not certain. Moved some business to Portland by the U. P. and Short Line.

30 or 40 through lines, Chicago to California.

Never tried to work California business via Portland.

(1744) Also moved some by the Shasta route. As a rule, it didn't go that way at his direction, but because the shipper wished to use the route. It was rather unusual, however, and no great volume of business went that way. The amount was "very light compared with the whole volume." The S. P. could not participate in Portland business, unless it went by the Shasta route. The S. P. representatives in Chicago endeavored to route Portland business that way. The Frisco and Rock Island agency at Chicago were consolidated, just as the S. P. and U. P. were. (1745) The two former lines competed for coast business before the consolidation. What the Frisco got moved by way of St. Louis out of Chicago over the Chicago & Eastern Illinois, and then by the Frisco to a junction with the S. P. Witness forgot the junction point. Cannot say how actively the Frisco competed for coast business. Doesn't recollect any other cases where the agencies of competing lines were united. The agents of the connecting lines worked with the agents of the transcontinental lines. That has always been true.

Amount of Portland business via Shasta route very light.

(1746) Where the shipper wished to favor the U. P., the Rock Island would not be too persistent on its route by El Paso. Those cases, witness imagined, would be where the U. P. had been soliciting the shipper. After the solicitation, witness cannot say that there was any change in the movement of freight over the U. P. or over the Rock Island's connections by Denver. Knew the U. P. pre-

ferred the route by Omaha. Doesn't know whether there was any change in the volume of traffic coming to the Rock Island from the coast. The U. P. was soliciting business at Los Angeles. It had a route to Los Angeles by way of Sacramento. Doesn't think the New Orleans route to Los Angeles cut much figure, but cannot say how the volume of business on the other lines compared. S. P. solicited either by El Paso or New Orleans.

One party insisted on sending traffic via Portland.

(1747) The Atchison was an active competitor for all that business. Not sure whether they worked Portland business or not. Although he never solicited business for San Francisco by way of Portland, remembers one time when some party insisted, for some reason or other, on carrying business that way. It might have been on account of a blockade or something. Doesn't recall why. Knew the route was always open. Remembers the Can. P. maintained a differential to San Francisco. Doesn't remember how successful they were in getting business. (1748) The shipment by Portland above mentioned was the only one witness ever knew to go to San Francisco that way, and witness has been actively soliciting at Chicago and Kansas City for 28 years. Distance from Ogden to Los Angeles is about 1,154 miles; so that if business went that way, the S. P. would still get a thousand mile haul on it out of Ogden. If it went by way of New Orleans, the S. P. would get about an 1,800 mile haul.

That was the only business he ever knew to go that way.

Oranges.

(1749) There are a great many roads leading up to the Missouri River and very few from there on. Oranges coming east from Southern California, witness thought, moved by way of Sacramento and El Paso, and the Rock Island participated in the haul from El Paso. The business was not solicited at the Chicago end, but was controlled by the shippers generally. Hasn't gotten any orange shipments by way of Denver in recent years. The Rock Island's shipments all came by El Paso after that road was built. They might, however, have moved either by way of Denver, Omaha or El Paso.

Morse.

(1749) JOHN W. MORSE.

Chicago. Formerly in railroad business.

Lives in Chicago, Ill. Auditor for a private corporation in Chicago. (1750) Formerly in the railroad business. From 1870 to 1877 employed by the Burlington at Omaha. For ten years after that with the U. P. in Chicago and Omaha, and after that, up to May 1, 1906, commercial agent of the Missouri Pacific at Chicago. 1877 until 1879, represented U. P. at Chicago. After witness left, the freight and passenger departments were divided up and represented respectively at Chicago by McDonald and Gault. The latter is now dead. Various agents mentioned. (1751) Prior to the consolidation, the S. P. worked its coast business by El Paso. Knew of some business by way of New Orleans. That was when witness first came to Chicago. There were other junction points between New Orleans and El Paso. On business via New Orleans, S. P. worked with Illinois Central.

Prior to 1901, S. P. worked business via El Paso.

(1752) The Missouri Pacific worked coast business chiefly by the El Paso route. Took it from St. Louis on. The competition was active. U. P. worked Portland business by way of San Francisco and boat until the Short Line was completed. Short Line didn't belong to the U. P. during the receivership. The Shasta route was not used for Portland business while witness was with the U .P.

(1753) After the consolidation, the competition between the U. P. and S. P. was materially reduced. Doesn't think any competition existed after that. Shipments very rarely went to San Francisco over the O. R. & N. boat line. Doesn't recall any moving that way. Doesn't know of the Can. P.'s differential. That didn't come to his attention. Has had no connection with the U. P. since 1887.

Shipments rarely went to San Francisco over O. R. & N. boat line.

(1754) 'Witness' only opportunity for observing the relations between the U. P. and S. P., after he left the former's employ in 1887, was soliciting California freight, both by Ogden and El Paso, for the Missouri Pacific. Solicited business from Chicago territory. Of witness' own knowledge, the S. P. solicited freight prior to 1901 from Chicago via New Orleans. Witness co-operated with them in moving freight by Texarkana and El Paso, but not by New Orleans.

(1755) Missouri Pacific worked business with the coast by way of Texarkana and El Paso, or by way of Pueblo and Ogden. Worked with the S. P. by El Paso, but not by Ogden. S. P. didn't solicit business the latter way, at least, not to witness' knowledge. The S. P. co-operated with the witness by way of El Paso, because the latter wanted it that way by reason of the long haul. Witness had two lines, one by El Paso, and one by Pueblo, and the S. P. agent was in a similar fix. Both wanted the long haul, if they could get it, and if they couldn't get that, took the short haul.

Mo. Pac. had three gateways for California business-El Paso, Pueblo and Ogden.

Witness worked his two lines for the long haul.

(1756) Witness, however, never knew of Neimyer soliciting business by way of Pueblo. When business reached Pueblo, it might have gone west by the Atchison, but witness never sent business that way. All went over the Rio Grande and S. P. Notwithstanding competition was fiercest by way of Pueblo, and that the S. P. was bound to get business by way of El Paso, witness wished to be understood as testifying that Neimyer worked the El Paso route, but not the Pueblo. From Pueblo witness routed business over the Rio Grande to Ogden.

(1757) Southern California business rarely moved by way of Pueblo and Ogden. Some business was moved by the longer route, because the shippers wished to save storage by keeping the freight aboard cars a longer time. Climatic conditions also have a large influence, especially in fruit shipments. A great deal of fruit moved by way of El Paso. Not much by way of Pueblo. Didn't solicit fruit the latter way, because of climatic conditions. Witness' San Francisco business moved about equally via Ogden and El Paso. He worked it both ways, preferring the route that gave the longest haul. He represented the Texas & Pacific, as well as the Missouri Pacific, and it was his business to give the former a haul, if he could. Therefore, he preferred the El Paso route. The Missouri Pacific proper

Sometimes by longer route to save storage.

Climatic conditions a factor.

got the longer haul by way of Pueblo, about 20 per cent. longer, but witness preferred his longest combined line; also on account of the better service by way of El Paso.

(1758) Witness' immediate connections on El Paso business were the Wabash and the Alton. Principal lines soliciting California business from Chicago included all the lines west of Chicago. They were all soliciting California business. These lines named. (1759) Witness was connected with the freight department of the U. P. from 1877 to 1880. The next seven years he was not connected with the freight department, but was the general agent of the U. P. at Chicago—both freight and passenger. The shipments to Portland by way of San Francisco occurred between 1877 and 1880; also after 1887, when witness resumed the freight business with the Mo. P. He used the boats from San Francisco to Portland. The business moved by El Paso. The volume of this business was small. Never knew any traffic to move via El Paso and the Shasta route to Portland. Never knew any to move from Chicago to San Francisco via Portland. The U. P. used the direct line. The Great Northern and N. P. never competed for California business. The shipments to Portland by boat by way of San Francisco were prior to the opening of the O. S. L.

Shipments to Portland via S. P.

Boats to Portland prior to opening of O. S. L.

(1760) Never knew any shipment to go that way after the completion of the O. S. L. in 1884. In stating that the service was better by way of El Paso than by Ogden, witness referred to the service up to the junction points, the Missouri Pacific service to Pueblo being slower than by way of Texarkana. That was because the line was new and the equipment light. Witness didn't mean that the through time service was better. From 1880 to 1887 witness was general passenger agent of the U. P. at Omaha. The Atchison and the U. P. were competing for coast passenger business in those days. Witness didn't feel the competition of the Sunset route very actively in his territory. The S. P. ran through trains from New Orleans.

Passenger traffic.

(1762) On the passenger traffic from New York and the Central territory, Cincinnati and that region, to California, there was competition between the New Orleans routes and the routes through Chicago; chiefly the far east. That was in 1883 and 1884 and subsequently. The S. P. obtained a large amount of the passenger business, especially the emigrant business. Doesn't know that the Texas & Pacific completed a connection with the S. P. by way of El Paso before the S. P. line from New Orleans was opened. None of that business went over the T. & P. by way of El Paso. Witness presumed it was because of more active solicitation on the part of the New Orleans route. Doesn't think the T. & P. ran to New Orleans at that time. It had not been completed. It was opened to New Orleans about 1883. Didn't know the Texas Pacific line from New Orleans to El Paso was opened before the S. P. line. Thought they were opened about the same time. Didn't know the S. P. line between New Orleans and El Paso was the short line.

T. & P. opened to El Paso before S. P.

Thought that and the T. & P. were about the same length. The T. & P. got very little of that business. The S. P. had the advantage of a boat line. Passengers went by boat to Galveston over the S. P. line.

(1763) That is the line witness has been testifying about. Their rail line is the G. H. & S. A. Doesn't remember when that was consolidated with the S. P. That line gets to Galveston over other connections. Boat line went from New York to Galveston. Thought he was not mistaken about that. This emigrant business from New York to Galveston by boat, and thence over the S. P. to California, is what witness testified was in competition between the U. P. and Atchison. Doesn't know of any other lines that tried to get the business. Witness admitted that the N. W. and the trunk lines "between New York" were all soliciting it. (1764) The U. P. has a link of 1,000 miles from Omaha to Ogden, and of 800 miles from Kansas City to Denver. The U. P. got more per mile out of the through rate between 1880 and 1885 than the lines east of Chicago, because the rates west of the Missouri River were higher, because of the new heavy grades, new territory, sparse population, and the expense of operating. In testifying about passengers going to Galveston, he meant the Mallory line, not the Morgan line.

Emigrant business via Galveston

(1765) Divisions are made on the Missouri River, and then there is a division of the rate from that River to the coast, between the western lines. The U. P. had 54 per cent. and the C. P. 46, during witness' day, based on mileage. Before the divisions, there was some deduction for terminal expenses. There was a bridge arbitrary at Omaha, and a terminal arbitrary at San Francisco. The lines east of Chicago did not get percentages, but got an arbitrary. The foregoing applies both to freight and passengers. (1766) A large percentage of business is controlled by the active solicitation of agents. Witness in this territory worked both with connections and solicitors. Work with connections very important. Witness could not well control the business against them. In soliciting, sometimes the lines other than the initial lines secured the business and controlled it.

Division of rates

(1766) W. J. EVANS.

Evans

Lives at Peoria, Ill. For ten years traffic manager of the Kingman Plow Company, at Peoria, Ill. Ships principally to the south, southwest and west. Occasionally North Pacific coast points, California points, and to Russia. (1767) Russia business moves via the Suez. Formerly it went via the North Pacific coast points or San Francisco to Vladivostok. Prior to employment by Plow Company was for four years general agent of the Great Northern at St. Louis (from 1896 to 1900). Previous to that, for three and a half years, assistant general agent of the G. N. at St. Paul, having charge of the local territory in Minnesota, North and South Dakota, and the business to and from those states; and prior to that, witness was claim agent of the Great Northern lines; and prior to

Peoria, Ill. With Kingman Plow Co.

Routing of his traffic.

that chief claim clerk of the St. Paul, Minneapolis & Manitoba, and prior to that chief clerk of the Claim Department of the Chicago, St. Paul, Minneapolis & Omaha Railroad. Witness' California business is principally to southern points, and it moves principally via the U. P. and San Pedro. Witness is solicited by the Chicago-Missouri River, and the Chicago-St. Louis lines; also by representatives of the lines west of the Missouri River; the Salt Lake route and the U. P. principally. Soliciting done by traveling agents, who report to their superiors at Chicago. The joint agency solicits preferentially via the U. P.

(1768) The joint agency works for the long haul represented by the U. P. and S. P. together. The San Pedro solicitor works the long route, but is satisfied with that via Provo, in connection with the D. & R. G. He is willing to let it go C. B. & Q. to Denver or Rock Island to Colorado Springs. The San Pedro road expresses no preference between the lines. When witness was in St. Louis, the Harriman lines had separate representatives. Witness was then the general agent of the G. N., and was after north coast business, but he thought the S. P. on California business was working with nearly all the lines operating west of St. Louis.

Traffic from St. Louis.

(1769) The S. P. worked business from St. Louis by way of the Illinois Central to New Orleans. The U. P. wanted the long haul via Denver to Ogden. From St. Louis the business to reach the U. P. would go to Omaha or Kansas City. The latter principally. The U. P. competed with witness to Portland when he was with the G. N. He reached Portland over the O. R. & N. from Spokane. The competition was quite active. The N. P. was interested in that traffic, and had an agency at St. Louis, soliciting very actively in connection with the Burlington, via Billings, if they could not get the haul from St. Paul.

(1770) The Iron Mountain & Southern had a route in connection with the T. & P. via Texarkana and El Paso, and the Frisco had a route, witness thought, with the Texas Midland via the Ft. Worth & El Paso, and the M. K. & T. also had a connection with the T. & P. at Fort Worth. These were the principal southwestern lines. Never heard of any business going from St. Louis to Portland by the Shasta route. The G. N. tried to get no business south of Portland. Concerning the S. P.'s southern route, witness' testimony was based upon hearsay, but he understood that if they could not get the long haul, they sought to send it by Ogden, and that is the same principle upon which the joint agents still work.

Shasta route not used.

If S. P. could not get long haul, business was sought via Ogden.

(1771) Sometimes they are governed by the line from whose agent they obtain the "tip"—co-operate with the line whose solicitor gives the first information. Witness has been shipping to California principally by the Rock Island through Denver and the Chicago & N. W. and U. P., or the C. & A. and U. P. Doesn't ship any over the Rock Island by way of El Paso. Southern California business has gone principally to Los Angeles, for which witness uses the San Pedro. He is actively solicited by all the

western lines. S. P. was handling business from St. Louis by way of New Orleans, as well as by El Paso and the other connections. The Illinois Central had a considerable voice in that routing, and were trying to get the long haul via New Orleans. (1772) Since then, the Illinois Central has extended its line to Omaha, and witness thought they are now working that route, but doesn't know, because he never gave them any encouragement. When the agencies were separate, the long haul meant the longest haul over either line separately. Now that the agencies are united, the long haul means the longest, made up of the lines of the two roads. Witness is not interested in the division of the rates between the carriers.

Is actively solicited by all western lines.

(1773) W. A. BROLIN.

Brolin.

Secretary and Treasurer of the Skandia Furniture Company, of Rockford, Ill. About twenty years connected with that Company. Cannot state positively, but his recollection is at the time of the separate agencies, the S. P. tried to route via the Illinois Central to New Orleans. The U. P. routed by their own line. (1774) The joint solicitor doesn't specify the line. Just asks for the business. Portland business moves principally by the N. P. and G. N. Sometime moves by the U. P. and Short Line. That has always been the case, as far as witness recalls. Remembers a Canadian differential. Only a small amount of witness' business moved by Vancouver. Doesn't remember how long that lasted, but thinks he shipped that way only a short time. (1775) Rockford is 85 miles from Chicago, on the "Q," Illinois Central, N. W., and St. Paul. The shipments by way of the Can. P. were about 1901. Thinks that condition existed only a short time. Thinks he has shipped to California by way of Portland, but doesn't remember any circumstances connected therewith.

Rockford, Ill. Sect. and Treas. Skandia Furniture Co.

Movement of traffic.

Shipment via Portland.

(1776) The quantity would be a carload, but there would not be many. Wouldn't like to say whether it was three or ten years ago, but it was nearer ten. Didn't ship that way frequently. Not desirable to ship furniture by water. Would not ship that way at an equal rate. Cannot state positively whether the S. P. solicited preferentially by way of Ogden, or El Paso, or New Orleans. Not interested in the gateways. Doesn't mean to give any testimony on that point.

(1777) ALBERT EVI.

Evi.

Traffic manager for Deere & Company, large manufacturers of agricultural implements at Moline, Ill. In shipments to California they use the Ogden and El Paso gateways, also ship over the Santa Fe. Shipped to Portland via Ogden and over the Northern routes. S. P.'s solicitation at Moline was in charge of the St. Louis office, and the separate agent of the S. P. solicited both the Ogden and El Paso routes. (1778) Doesn't recall that he ever expressed a preference. The joint agent afterwards preferred the Ogden gateway. He solicited by Omaha or Kansas City; preferably

Moline, Ill. With Deere & Co.

Solicitation of his business.

Omaha. It is about 250 miles from Moline to Omaha, and witness guessed about 800 to El Paso. Wouldn't say it was not further. Lines soliciting California business mentioned. (1779) Witness not interested in the division of the through rate. Never shipped his plows by water, except to foreign countries. Traffic to the Orient moves both by Suez Canal and by Pacific ports, San Francisco, Seattle and Vancouver.

Routing of Oriental traffic.

(1780) The Oriental business moving via San Francisco has been handled by the S. P. via Omaha and Ogden, and also by the Atchison. That through Seattle has been handled with the G. N. by Minnesota Transfer; and Vancouver by the Can. P. There has been no change in the quantity of traffic via El Paso, as compared with that via Omaha, since the consolidation. Witness divides up the traffic, and gives it to the lines that are open and apparently able to give the best service. That varies at times, principally on account of snow. Witness' business moves practically all in the winter time. Shipments by El Paso for California points are about twenty per cent. of those via Ogden. That has been just about the same during the last ten years. Do not usually ship by El Paso, except when there is snow trouble north. Business is not solicited by lines connecting with the S. P. at El Paso.

Traffic distribution unchanged.

(1781) It is solicited by lines going to Omaha. Soliciting agents "can influence some traffic." The joint agent of the Harriman lines serves witness' purpose very well. Has no occasion to complain. The railroad transportation service is very much improved in recent years. That is true all over the country, quite perceptible over the Atchison and the lines running to the Missouri River. Doesn't know much about the Illinois Central. (1782) Joint representatives look after witness' freight, as well as separate agencies did, or as well as the representatives of other lines. That is what he meant in stating that he was well served by them. They pay the losses or help witness get them adjusted. Trace shipments. Thinks that if the S. P. had a separate agent, it might be able to route some business to California by the long Southern route, that now goes over the U. P. Doesn't see why the S. P. man should rather have it by El Paso than Ogden, except for a little longer haul. Witness not interested in the division of the through rate.

Joint agent services. No occasion for complaint.

Joint agents just as attentive as separate agents.

Phillip.

(1783) EMANUEL L. PHILIPP.

Milwaukee. Pres't of Refrigerator Co.

Lives at Milwaukee, Wis. For the last six or seven years President and Manager of the Union Refrigerator Transit Company. Prior to that, from 1894 to 1900, was in the lumber business in Mississippi. From 1892 to 1894 was traffic manager of the Schlitz Brewing Company, at Milwaukee, and from 1889 to 1892 agent at Milwaukee of the American Refrigerator Transit Company, and prior to that employed by the Northwestern. Before the consolidation, some perishable freight moved in winter to the Pacific coast from Milwaukee over the Illinois Central. Considerable freight

Routing of his business.

moved by El Paso. It was at times solicited that way, and the route was also desirable for other reasons.

(1784) When witness was with the U. P., he worked the Portland business via the Short Line. Knew of a few shipments going by the Shasta route, but they didn't amount to much. Heard of a few cars that moved via El Paso, but it was very small; a roundabout route and only a very few shipments. The El Paso route for California business was preferable in winter to shippers of perishable freight. Most of the Schlitz Brewing Company's shipments move via Ogden. The export business was divided between all the ports on the Pacific coast. Couldn't say now which got the most. It was largely a matter of vessel room—Seattle, Tacoma, Portland, San Francisco and Los Angeles. Export business went to every country on the globe. The boat lines had no soliciting agents that witness knew of. They worked by the rail connections. Shipments were determined largely by vessel room. Witness saw to that himself. In other words, it depends upon when you could get a boat to go where you wanted to ship. At that time the Brewing Company shipped about 12,000 to 14,000 carloads a year. Sometimes shipped over the Atchison. Export business.

(1785) The initial lines that took witness' shipments out of Milwaukee were the C. M. & St. P., the C. & N. W., and the Wisconsin Central. In case of traffic moving by way of El Paso most of it came via Chicago, and was there delivered to the St. Louis lines. Knew in a general way that the other breweries in Milwaukee used like routes. Export beer from Milwaukee is a very large business, and has been for many years. It moves altogether under refrigeration, except that the bottled beer does not move under refrigeration in summer. It needs to be protected against frost in winter, however. Remembers the Can. P. differential. That was used by the Milwaukee breweries to some extent, with their bottled product. San Francisco at that time was the largest market on the Pacific coast. Some of the breweries had distributing agents there. The Schlitz Company had not. It sold f. o. b. Milwaukee. El Paso route.

(1786) Traffic to Portland usually moved over the N. P. Sometimes over the U. P. and O. S. L. Ogden route handled more of the Pacific coast business than any other line. That business was actively solicited by all the lines west of Milwaukee. The S. P. west of Ogden handled more of the entire Pacific coast business than any other line. (1787) Whatever the N. W., the St. Paul, the U. P., the Burlington, and the Rock Island got passed over the S. P. west of Ogden. Some of the business went by way of New Orleans, and also El Paso. That was principally in winter. The El Paso route got some bottled business in summer. The heat didn't affect bottled beer particularly. That was not a very desirable route from Milwaukee. It was climatic conditions that controlled the movement by way of New Orleans. The El Paso gateway has Large business of Ogden route.

Effect of climatic conditions.

always been kept open. The cars of the Company of which witness is President, move over all lines.

Jilson.

(1788) H. B. JILSON.

Rockford, Ill. Agricultural Implements.

In charge of shipments of the Emerson Manufacturing Company, at Rockford, Ill. They are manufacturers of agricultural implements. Employed by that concern eighteen years. In charge of shipments for last ten years. California business now moves chiefly by U. P. and S. P. in connection with the San Pedro line; also by the Atchison. (1789) Prior to 1901 witness shipped some over the Rock Island via El Paso, but ships that way no longer. Business is usually routed by California agents. Routing is usually confirmed through the Rockford office of the U. P. and S. P. Before the consolidation, it was pretty much the same thing; the consignees did the routing. Very little was shipped by El Paso. Most of the shipments have moved through Ogden at all times. No longer ships to Portland, but formerly (1790) divided that business up between the N. P. and U. P. Thinks the G. N. also had some. Before the consolidation, some of witness' business moved by way of New Orleans over the Illinois Central None moves via New Orleans now. Quite a large percentage now moves over the U. P. and San Pedro, all routed by the consignees. (1791) The duty of the agent in this territory was generally merely to check up shipments, to see that it went by the route specified.

Routing of his business.

Jones.

(1791) C. S. JONES.

Peoria, Ill. Wholesale Grocer.

A wholesale grocer at Peoria, Ill., a manufacturing town of about 80,000 inhabitants, a great distributing center. There are fourteen railroads there, which witness named. (1792) Prior to 1895 witness was employed by the Chicago & Eastern Illinois Railroad for five years, and before that, from 1886 to 1890, by the Northwestern. Witness ships more from than to the Pacific coast. It comes usually S. P. and Atchison. Now largely via the Ogden gateway; part of it via El Paso. Prior to the consolidation, very little of witness' business ever moved by New Orleans from the coast. That happened where some of the business was destined, not to Peoria, but to points in Southern Illinois, on the line of the Illinois Central. More business moved by El Paso than New Orleans. The S. P. agent inclined to the southern gateway, but would take it either way.

Routing of his business.

(1793) The U. P. agent solicited by Ogden. Joint agent glad to get the business either way, but witness thought preferred the Missouri River route. It depends some on the agents of the other lines with whom they are working the business. If with the Rock Island, they take it by El Paso, and if with the Missouri River lines, by Ogden. When soliciting alone, their preference is the Missouri River. The joint agent frequently calls with the agents

Route solicited for depends somewhat on agent with whom he is working

of the other connecting lines. Witness' shipments principally come from San Francisco and from southern California, Yuba City. In 1901 witness' California houses were located on the S. P. tracks, but the Atchison now reaches more of them than formerly. S. P. agent preferred the southern gateway. (1794) He was not, however, particular in witness' case, because his traffic didn't admit of slow time. He was glad to get it either way. There has been no material change in the position of the joint agent since the consolidation. The Missouri River is, however, the preferred route now.

No change in position of joint agent since 1901.

(1795) JACOB YOUNGE.

Younge.

Lives at Peoria, Ill. From 1903, traffic manager of the Wilson Interest, at Peoria. For three years prior to that traffic manager of the Acme Harvester Company, and previous to that in the local office of the Atchison at Pekin, Ill. Prior to the consolidation, if the S. P. agent was soliciting alone, he would try to get the longest haul by way of El Paso or New Orleans, and if he was with the agent of one of the Missouri River lines, he would be glad to get it by the Ogden gateway. The U. P. agent solicited by Kansas City or Omaha. (1796) The joint agents now solicit by Kansas City and Omaha. Witness is solicited every ten days or two weeks. The Acme Harvester Company's North Pacific coast business moved by various routes—Atchison to Colorado Springs and Denver, and the Colorado Midland and O. S. L. and O. R. & N.; by Omaha, U. P., O. S. L. and O. R. & N.; by Minnesota Transfer, G. N. or N. P.; but the heaviest traffic moved by the Omaha gateway, O. S. L. and O. R. & N. to the North Pacific coast. The traffic was solicited by all the different lines. Witness ships to Portland over the U. P., G. N. and N. P.

Peoria, Ill. Traffic man.

Solicitation of business.

All lines solicited.

(1797) The S. P. solicitor, when he called with other agents, endeavored to work by Ogden, El Paso or New Orleans, as the case might be; and when alone preferred the longest gateway. He called alone about half the time. Witness not interested in divisions. S. P. agent worked actively with all the lines leading to Ogden, those leading to El Paso, and those leading to New Orleans. The business was solicited by all the lines in this territory. Witness never shipped any business to Portland by way of El Paso or New Orleans. Did have some cars to Portland via the Atchison and S. P. by Sacramento to Portland. That was on Atchison's solicitation. Never shipped anything to California by way of Portland.

S. P. solicitor worked for his three different gateways as the case might be.

Route to Portland via El Paso or New Orleans never used.

Never used Portland route to San Francisco.

(1798) JOHN J. BOLGER.

Bolger.

Lives at Chicago. Over four years traffic manager of the Michigan Stove Company. Previous to that for about a little over three years station agent and division agent of the Baltimore & Ohio, in Chicago, and at Chicago Junction. Previous to that employed by Swift & Company and one of their subsidiary concerns, the California Fruit Transportation Company, in New York, and in the

Chicago. Traffic man.

fruit territory. With Swift & Co. at Chicago as rate clerk for five years. Before that chief clerk of the Illinois Central Fordham yards. Was also for a time chief route clerk and chief billing clerk of the Illinois Central. Prior to the Illinois Central service, was with the Milwaukee & St. Paul for 3½ years, and with the Michigan Central before that.

(1799) 22 years either in the railroad service or connected with the traffic of shippers. When witness was with the Illinois Central, the S. P. handled Pacific coast business via New Orleans. The U. P. worked business by Omaha. The competition between the two lines was keen. The Illinois Central ran a fast manifest train from Chicago to New Orleans. Coast traffic moved on that train. That was a system invented, or, at least, copyrighted by J. M. Daily, to put certain high classes of freight on that train, with a manifest tag on the car, and the car waybill accompanies it, the car number, etc. The car number is known by a letter mark after it leaves Chicago, for easy tracing in the car record office. It has the right of way over everything, except passenger trains. (1800) Witness could not give the exact time, but his recollection was the run was made in sixty hours. The train ran daily, sometimes in several sections. Through traffic was not unloaded at New Orleans. The cars went through.

Manifest freight.

(1801) The Stove Company ships California business as much as possible over the Atchison; to the North Pacific coast over the N. P. and G. N. One or two cars have gone to Portland by the U. P. That was at the earnest request of the consignees. The joint agent solicits by the U. P., and when he knows he cannot get it that way, asks to have it routed S. P., that is, either via Ogden or El Paso. The Stove Works are at Detroit. Doesn't ship any by New Orleans now. Witness doesn't ship anything by the U. P. or S. P., if he can help it. (1802) It wasn't a good line to him. Didn't give him as good service as the Atchison. They have a shorter line than the Atchison, but it took them a longer time. The Atchison has put cars through in twelve days, and sometimes the U. P. took two months. The Illinois Central manifest train is still running. (1803) Illinois Central doesn't solicit from Chicago via New Orleans to-day. They don't come to witness soliciting either by New Orleans or Omaha.

Santa Fe preferred over U. P. and S. P.

(1805) They have never solicited witness. When witness was connected with the Illinois Central, the S. P. tried to get business through New Orleans. In witness' direct testimony he was speaking only of himself. The Illinois Central had no line to Omaha at that time, and the only intelligent way for the S. P. agent to solicit him was by way of New Orleans. Not knowing, he couldn't say that they didn't solicit as earnestly with other lines going by way of Omaha or by way of El Paso. Doesn't know how the agent solicited other lines. Wouldn't answer as to that. Doesn't know of any instance where S. P. agent went to the shipper and solicited business by way of New Orleans, when that business had not been

An individual expression only.

secured by the Illinois Central or some other New Orleans line. (1806) Doesn't know of any reason why the S. P. agent shouldn't try to get the long haul from the Mississippi River to California rather than the short haul from Ogden. It is over 2,000 miles from New Orleans to San Francisco.

An isolated case.

(1807) In the past witness has shipped over the U. P. The car that took two months was an isolated case, but ordinarily the Atchison has done better, and then witness gets answers to his communications and tracers from the Atchison office better than from the Harriman offices. Witness' Pacific coast business runs from 60 to 100 cars a year. Detroit gets the same rates as Chicago; Detroit-Cleveland territory they call it, as a rule. When a car goes from Chicago to New Orleans for San Francisco, it is further from its destination than when it started. (1808) In 1895 there was better train service by New Orleans than by Ogden. Knows he couldn't beat the Santa Fe on it now.

Route to San Francisco via New Orleans circuitous.

Soliciting agent works with lines originating traffic.

(1809) It is customary for the soliciting agents to work with the lines on which the traffic originates. (1810) The soliciting agent would use his strongest cards for the longest haul. If he couldn't get it that way, would try the next best. The fact that the S. P. agent would come out to see about cars that were moving to California over the Illinois Central proved that they had been soliciting from the shippers. The solicitor would not know anything about it, as a rule, until he was notified of the movement of it. (1811) Knew also that the S. P. solicitors were going to industries on the belt railway of Chicago, and asking business by way of New Orleans.

Solicited via New Orleans route.

(1812) F. B. MONTGOMERY.

Montgomery

Chicago. With International Harvester Co

For the last three or four years in charge of the traffic of the International Harvester Company, at Chicago. It was organized in 1902. (1813) Prior to the organization of that company, witness was employed by the McCormick Harvester Machine Company for two years. The latter was absorbed by the former company. Oriental business moves both through the Suez, and from the Pacific coast, from San Francisco, Portland, Seattle, Tacoma, and Vancouver. A little of it moves by the Atchison line from San Diego.

Texas gateways

(1814) Before the consolidation, the S. P. agent wanted the long haul through the Texas gateways. Witness doesn't think "any particular traffic" moved through New Orleans, nor is he sure that the S. P. agent solicited that way. The Illinois Central may have, but it is a roundabout way from Chicago. The Houston & Texas Central joins with the Santa Fe. The junction points of the Rock Island-Frisco line would be Fort Worth, Dallas, Sherman. Witness doesn't just remember the points. The U. P. agent solicited traffic through Omaha or Kansas City, as a general thing preferring the longer route. Witness' Portland business moves over the G. N.,

The various lines still solicit.

N. P. and U. P., the bulk of it over no one road. That business is and always has been solicited by the various lines.

(1815) The Oriental business is solicited chiefly by the rail connections of the steamship lines. Not very much goes that way. Rates are better through the Suez. To a considerable extent that has always been true. Ships by the Pacific coast into Japan, China and Siberia, but not very heavily. Since the consolidation, witness has not been brought into contact with the solicitors. One of his clerks sees them, and witness cannot testify how they solicited. Witness doesn't think there has been any difference in his shipments over the D. & R. G. since the consolidation of the U. P. and S. P. Could not say without examining his records, but he endeavors to divide traffic with all the railroads. Does that of his own motion, as far as he can. (1816) He routes his own traffic. It is solicited by all of the railroads that could handle any of it; every railroad running west, southwest or northwest from Chicago. The Northwestern lines did not solicit anything south of Portland. Thinks a steamship line from Portland once pretended to give some competition into Frisco, but it didn't amount "to anything worth while." Doesn't remember what year that was. Witness ordinarily doesn't ship his domestic business by water, because of the handling. Never used the water line from Portland to San Francisco. Traffic for California over the U. P. had to move on the S. P. west of Ogden.

Divides traffic with all the roads.

Portland-San Francisco route didn't amount to anything.

(1817) No other outlet prior to the construction of the San Pedro. Thought the agents of the S. P. and the U. P. before the consolidation solicited traffic by practically any route they could get it. Doesn't recollect the S. P. soliciting by way of New Orleans. The shipper is not interested in the divisions. Oriental business from the Pacific coast goes principally from Puget Sound. No considerable quantity has gone through Portland, and witness thought none during the last several years. Is not positive about it, and really doesn't know. (1818) S. P. solicited preferentially through the Texas gateway. (1819) Texas & Pacific joins with the S. P. at New Orleans and El Paso. It also crosses the H. & T. C. The latter line runs southeasterly, and to deliver at the junction with the H. & T. C. would detract from the haul of the T. & P., and would necessitate a back haul to a certain extent. Witness thought before the consolidation the U. P. and S. P. competed with each other. The U. P. agent, in working for business, was also necessarily working for the S. P.

Before 1901, agents of the S. P. and U. P. sought the traffic by any route they could get it.

(1820) Such competition as existed was between two lines, of both of which the S. P. formed a part. (1821) Never heard of any freight moving to Denver over the U. P., and thence over the Atchison to California. The three general routes, and the only routes for California, were the Atchison and its connections, the U. P.-S. P. via Ogden, and the S. P. and its connections by way of El Paso.

Never heard of freight moving to Denver over the U. P. and thence via Atchison to California.

(1822) OSCAR F. BELL.

Bell.

Chicago. With Crane Co.

For over sixteen years traffic manager at Chicago, of the Crane Company, largest manufacturers of steam fitting materials in the country, with plants at Chicago, Bridgeport, Conn., and one at Pittsburg not yet in operation. Shipments from Pittsburg have moved over practically all the lines to the coast. Prior to the consolidation, the S. P. agent endeavored to route business from Cincinnati and Pittsburg by New Orleans, and the U. P. agent by the Missouri River. The S. P. agent didn't try to route business from Chicago via New Orleans. Both agents actively solicited. (1823) Doesn't recollect sending any business from Chicago by New Orleans. It moved out via Ogden. Some small portion of it may have gone via Texas junction points. Quite a considerable tonnage has moved from Cincinnati and Pittsburg via New Orleans. From Chicago the route via Omaha was the quicker. It was shorter and gave a quicker and better service.

S. P. agent didn't try to route Chicago business via New Orleans.

Better service from Chicago via Omaha route.

(1824) Since the consolidation, the joint agent solicits business, but is neutral as between the lines via Omaha or El Paso. Some of witness' business to lower California moves over the San Pedro. It moves over the U. P. and also the D. & R. G. He endeavors to distribute traffic among the different lines, as equitably as he can. Traffic to the North Pacific coast points moves over all the lines, the St. Paul, the G. N., N. P., Can. P., and Missouri River crossings, the Rock Island, Burlington, D. & R. G., Short Line, and O. R. & N. Before the consolidation, witness' recollection is that S. P. agent solicited Portland business via Ogden and the Shasta route. The U. P. agent, when the O. R. & N. was not a portion of the U. P. system, solicited in connection with the Shasta route. Afterwards, in connection, with the Short Line and O. R. & N. Witness has shipped to the coast by the water lines, the American-Hawaiian Steamship Company, the clipper ships around the Horn from New York and Philadelphia, and also the Panama route. (1825) Shipped by the Panama route mostly from Bridgeport. From that territory also ships by the Morgan Line, but not a large volume. Traffic moves from that territory by the all-rail lines also. The U. P. has always solicited that traffic, and also the Morgan Line has. Thinks the Can. P. differential was before he, in 1892, entered the employ of the Crane Company. Doesn't remember using it. Atlantic seaboard business is now and has always been solicited by a great many lines.

Routing of his traffic.

(1826) Solicited by all the lines from the Atlantic to the Pacific, and traffic still moves by all of them. (1827) With reference to Chicago business, the Northwestern would turn its business over to the U. P. at Omaha, and so would the St. Paul, usually; although it might deliver it to the Atchison at Kansas City. The Rock Island and Burlington would take theirs to Denver, and then deliver to the D. & R. G. or U. P. All those lines in soliciting California business solicited for the S. P. route west of Ogden, or, after 1905,

All the Iowa lines solicited for the S. P. west of Ogden.

Never used Portland route.

for the San Pedro route for lower California. Never shipped anything to California by way of Portland.

Shasta route not used.

(1828) Witness thought a long while ago he had shipped a little traffic over the Shasta route to Portland. It was very unusual. That route is not as good as that via the O. S. L. or the N. P. or G. N. It is an impractical route, as compared with them, and since the O. S. L. and O. R. & N. have become a part of the U. P. system, business is not solicited that way. He is not interested in the divisions. Since the consolidation, rates to Portland over the Shasta route have been taken out, but apart from that, witness would not want to ship that way. (1829) It used to happen that the longer haul could make a lower rate than the shorter haul, but not very frequently. The Morgan Line, Sunset route, though longer than the all-rail line to San Francisco, in point of service is perhaps better. The S. P. through El Paso competes with the Atchison to Los Angeles, though the former is the longer line.

Service over S. P. and U. P. via Ogden very much improved.

(1830) Since the rates by all lines were made uniform, shippers are largely influenced by the service, and also by the personality of the agents. The U. P. and S. P. line via Ogden has been very much improved in the last seven or eight years. So have the Atchison and all the other railroads in the country. Both the Harriman lines and the Atchison give excellent service.

Ginz.

(1831) H. H. GINZ.

South Bend. Agricultural Implements.

For the last two years a dealer in retail agricultural implements at South Bend, Ind. Formerly for about ten years employed by the South Bend Chilled Plow Company, in charge of their traffic from 1899 to 1907. (1832) Prior to the consolidation, the S. P. representative endeavored to route business via New Orleans over the Illinois Central, and the U. P. via Ogden. They used every effort to get it, they could. At one time they were willing to pay for it. No special equipment required for carrying plows. Witness' business was practically all carload.

Fast freight on Ill.Cent.

(1833) Prior to the consolidation, he divided business equally between S. P. at New Orleans, and the Atchison, and the U. P. at Ogden or Kansas City. Shipped to the North Pacific coast points, including Portland, over N. P. and G. N. There was a fast train from Chicago to New Orleans on the Illinois Central, that used to pick up south-bound cars at the junction of the I. I. & I. and the I. C., and freight moving over that route made good time to the coast. After the consolidation, the joint agent solicited preferentially for the Ogden route. He claimed that there would be better service that way, and that the fast service on the I. C. had been abandoned. Doesn't remember any one working for the southern route after that.

(1834) Practically all the lines running west and southwest of Chicago in addition to the U. P., S. P. and Atchison, solicited witness' California business. All the intermediate lines. The U. P. and S. P. men were not the only two agents who were willing

to pay for business in the old days. The S. P. man came with an agent representing the I. C. about half the time. Witness doesn't remember his calling with an agent of any of the western lines. After the consolidation, witness gave the car to the agent to route either by the southern or Omaha route, as he pleased. (1835) Doesn't think the D. & R. G. ever sent a solicitor to call on him. Some few cars went over the Rock Island by way of El Paso. Possibly one or two cars over the Missouri Pacific and T. & P. Some of the business was routed by the consignees. None of the lines west of the "Missouri Pacific" got any of that business, except the U. P., unless it was routed from the other end. The I. C. has not quit soliciting business for California. They have always solicited by way of New Orleans.

S. P. solicited half the time with an Ill. Cent. man.

(1836) Doesn't think the I. C. solicits business by way of New Orleans as actively as formerly. That change occurred about three years ago. The I. C. man didn't tell witness the fast train was still on. He doesn't think he took it up with the agent. California business was practically all that witness had that the S. P. and U. P. could handle, and so he gave that to them and the Atchison. As to the intermediate lines, there was a good deal outside of the coast business that they could get a haul on, and witness' endeavor was to divide his business among all the lines. The Harriman joint agent ceased to route through the New Orleans gateway, and that is the reason witness' business ceased to move that way.

I. C. doesn't solicit via New Orleans as actively as formerly.

Divided among all lines.

(1837) CHARLES L. MILLHOUSE.

Millhouse.

For about eight years a manufacturer of asphalt at South Bend. Previously, for over three years, traffic manager of the Studebaker Mfg. Co., and prior to that agent of the Atchison at Peoria for eleven years. When witness was in Peoria, S. P. tried to get the long haul as much as they could via New Orleans, and the U. P. via Omaha. The business solicited consisted largely of agricultural implements and furniture, going west; and east-bound, canned goods, dried fruit and oranges. (1838) The east-bound freight was very often controlled in the east. Remembers some dried fruit or canned goods coming by way of New Orleans to points east of Northern Illinois points. The S. P. and U. P. were working the Ogden route together, in competition with the Santa Fe. That line was the Atchison's principal competitor.

South Bend. With Studebaker M'f'g Co.

The S. P. and U. P. were working the Ogden route together against the Santa Fe.

(1839) The U. P. solicitor worked by that route. The S. P. solicitor worked the Sunset route. (Presumably meaning by El Paso.) When witness worked the Atchison, all three were competing for business east and west. If S. P. couldn't get business by the Sunset, doesn't know whether they worked with the U. P. by Ogden, or not. Thinks he remembers the S. P. soliciting business by Ogden. Mr. Neimyer was actively working business that way. Understood that was what Neimyer was in Chicago for. If witness had been working for the S. P., and couldn't have gotten business out of Chicago by way of New Orleans or the Texas gateway,

and could have gotten it by way of Ogden, he would have tried very hard to do so, rather than have it go to the Atchison.

Holderness.

(1841) F. M. HOLDERNESS.

Kenosha, Wis. With Bain Wagon Co.

For sixteen years shipping clerk of the Bain Wagon Company, at Kenosha, Wis. Most of witness' Pacific coast business goes over the Atchison, and the U. P. via Ogden. Before the consolidation, the U. P. solicitor called on witness, but he doesn't remember the S. P. The I. C. solicitor also calls, but he doesn't solicit coast business via New Orleans. Quit soliciting that way some time ago. Witness in the old days sent very little by New Orleans. Sent some. The rates were equal at that time. Doesn't know whether they are now or not. He doesn't ship that way. The joint agent solicits by the Ogden gateway.

In old days sent some business via New Orleans.

(1842) Business for the North Pacific coast, including Portland, moves N. P. and G. N. and Can P.; also into Portland over the U. P. Almost all witness' business is routed by the consignees. That has always been the case. When business was brisk and there was a shortage of equipment, witness would take any car he could get hold of, and in that way shipments would occasionally be made over the I. C. via New Orleans. Some of the business goes to Los Angeles over the San Pedro. None goes over the S. P. since the San Pedro route was opened. Occasionally a car goes via El Paso. The question of equipment controls that. (1843) Doesn't recall ever having been solicited for California business via New Orleans by the S. P. Is positive that he has shipped that way, but very seldom. Almost all of witness' shipments go by way of Ogden.

Does not recall being solicited by S. P. via New Orleans.

Wratten.

(1844) EDWARD L. WRATTEN.

Racine, Wis. J. I. Case Threshing Machine Co.

Traffic manager of the J. I. Case Threshing Machine Company, at Racine, Wis. Has shipped to the Pacific coast for the last five years. The traffic moves via Omaha; also via Kansas City and the Atchison. Ships principally to Oakland, where there is a branch house, and distributes locally there. Business is solicited by the joint agent. Nobody calls on witness and solicits business by the Texas gateway.

(1845) The joint agent doesn't mention the route. Simply asks for the business, and if he gets it, it goes via Omaha. Shipments to California consisted of 10 or 15 carloads a year. Traffic to Portland moves N. P., G. N. and U. P. Witness has a distributing agency at Portland; also one at Spokane. Distributes from Portland to Oregon and some points in Washington. Threshing machines are all shipped on flat cars. Witness' business has never been solicited by way of the S. P. There are no rates in effect by way of New Orleans or Texas gateways from Racine to California. Witness is located on the tracks of the St. Paul and Northwestern. Never shipped anything into Portland by the Shasta route, nor to California by way of Portland.

His business has never been solicited via S. P. No rates in in effect.

(1846) W. H. KNIGHT.

Knight.

Resides at Hinsdale, Ill. His railroad experience is as follows: Commenced with the Buffalo & Erie, at Buffalo; then went to Des Moines, Iowa, and worked for the Rock Island in 1871-2; then came to Chicago in 1873 and worked for the Lake Shore for a short while; and then went to work for the Michigan Central until April, 1876, as a clerk; then transferred to the Chicago, Danville & Vincennes, and worked for them until 1881 as a clerk, contracting agent and general agent; in 1881 transferred to the Missouri Pacific as general agent in Chicago; in 1882 (1847) became contracting agent for the Wabash and Missouri Pacific, until 1883; then went to Detroit as division freight and passenger agent of the Wabash; remained there until 1887; then went to St. Louis as assistant general freight agent of the Wabash; on December 1, 1888, became general agent of the U .P. in Chicago, in charge of freight and passenger business until 1901. Since then worked for the Atchison a short time, soliciting business until witness took his present position (which does not appear). Witness didn't represent the passenger business of the U. P. all the time he was employed by it. His territory as general agent extended to just the other side of Erie, Pa., south of the line to the Ft. Wayne road; and west to the C. C. C. & I., out of Cleveland, and extended along that road through Indianapolis to the line running from Indianapolis through Decatur, and then the line of the Wabash railroad to Hannibal, and then the east bank of the Missouri River clear north to the Canadian boundary line. Witness competed with the S. P. agents. The traffic from that territory to the coast was substantial.

Chicago. Former general agent of U. P.

Witness' territory.

(1848) Competition for it was active. When you got south of the witness' territory as general agent of the U. P., the S. P. tried to work traffic by way of the southern gateways, but north of that line, in witness' territory, they worked the larger part in connection with him by Ogden. Traffic from Indianapolis dependent on service. Where rapidity was required, the S. P. used the Ogden gateway. Where it was a class of business that would stand longer service, they would take it by their longer haul. Where they used the Ogden gateway they worked with all the lines, but the U. P. were the closest connection that they had. The U. P. had the most direct route, and could give them the best service. They also worked with the Rock Island, the Burlington and the Missouri Pacific. Those lines would haul to Denver, and turn it over to the R. G. & W., or the R. G. and R. G. & W. and Colorado Midland. The D. & R. G. in those days had representatives in the Chicago territory. They were actively working on a strict maintenance of rates. They were not a strong line, because of being longer and having the mountains to go over. The service through the Ogden gateway was then excellent. Witness has taken certain classes of freight out of here with effort to make time, and put it in San Francisco in five days, but six or seven days was pretty regular service.

South of witness' territory, S. P. worked southern gateways; north of that line, S. P. worked with U. P. via Ogden.

Also worked with other roads using Ogden gateway.

Time.

(1849) There was a special freight schedule from New York of about eight days. The service from New York to Chicago was then about four days. The time from New York to Chicago is not as good to-day as it was then. All the railroads have gone crazy on the tonnage proposition. The time is not so good between Chicago and the coast, by any means, by any of the lines. Witness as agent of the U. P. worked business into Portland and Oregon points, and also out of there. Participated in the hop business. The principal hop distributing point was Sacramento. (1850) But there were a great many hops from Eugene and Ashland, or north of Ashland, that came out by way of Portland. Witness believes the U. P. was S. P.'s preferred connection, and they always treated the U. P. so that witness was perfectly satisfied with the share that the S. P. gave the U. P. Doesn't know of any hops moving down from Portland by boat. From Sacramento the hops moved east via Ogden. The S. P. even on the Atlantic coast business sent most of it all-rail direct through Chicago. From Ogden it didn't move exclusively by the U. P., but both ways. They divided their tonnage. The hop business came through both by the O. R. & N. and by the S. P. down to Sacramento. The O. R. & N. had a line of steamers from Portland to San Francisco.

Hops.

U. P. was S. P.'s preferred connection.

S. P. even routed Atlantic coast business through Chicago.

Distances.

(1851) Witness thought the boat line might well be continued as a good means of requiring fair treatment from the S. P., but that, of course, was a matter away above his determination. If witness remembered right, the division between the Central Pacific and the U. P. was 46 and 54, the distance being 850 miles from Ogden to Sacramento, and 1034 from Omaha to Ogden, but those distances have both been shortened up. The divisions were maintained without change while he represented the U. P. Witness never knew of any change at any time. There are a great many agencies maintained here in Chicago, of which the manufacturing or originating point is in the east, so that witness would very frequently solicit business in Chicago that would have an eastern shipping point. (1852) There was a good deal of business of that sort, and as to that business, witness competed with the S. P. In those days a great deal of the time rates were not maintained on this competitive business. When rates were maintained, service is the principal element. Included in the service, in the first place, is the convenience for delivery to the carrier, next, the time required to transport, also the question of equipment.

Service the principal element.

(1853) The S. P. were always pretty well supplied with equipment. Remembers the Can. P. differential. The U. P. couldn't meet it. The Can. P. not only maintained a differential, but something more in addition, that is, they published a differential and made rates to get the business. Witness thought that was one reason why it was not continued. It was too unprofitable. A great deal of business moved that way. Thought the time was fifteen days or more. Witness was in San Francisco and saw some lumber that had come around by the Can. P. It had been very much dam-

Can. Pac. differential unprofitable.

aged from handling, so that the Can. P. must have made a good deal better than a ten per cent. of the rate differential, in order to take care of the loss. They could not take bulky machinery that way, but things that were easily transferred; "rolling freight" more than anything else.

Rolling freight.

(1854) Rolling freight would include sugar and pork, in barrels, and boxed stuff of all kinds. Witness remembers a differential rate in which the U. P. participated from the Atlantic seaboard by way of New York to Savannah; also a line by way of Newport News or Norfolk, with the Norfolk Dispatch. Witness routed the business to Portland over the O. R. & N. There was no change in that during the receivership of the O. S. L. They were regarded as one interest, and merely for legal requirements a disintegration was made, and traffic was worked that way just as though there was no separate receiverships, but about that time what is known as the Provo gateway was thrown open to the D. & R. G. connections, and as a result there was lots of competition up on the Short Line and O. R. & N. with the Rock Island, the C. B. & Q., the Missouri Pacific, etc. It was said that the wool buyers would sit down at Salt Lake and play poker, and the railroad fellows would go up and load their wool for them, and ship it out, and then pay them a rebate. That was competition between the lines east of Salt Lake. It was wool traffic principally.

U. P. water and rail route.

Rebate competition in wool.

(1855) Never knew of a time when the D. & R. G. were getting in pretty strong on the O. S. L. business, and the U. P. sent a lot of Portland stuff around by the Shasta route. Witness never knew of a single shipment that the S. P. controlled taken out of the Chicago territory by them via New Orleans or the Texas gateways. Witness stated that if the S. P. took any business from the Chicago territory to the Texas gateways, he was very much duller than he thought he was. They certainly did not let him know it, and he was trying to keep track of all that was going on, and generally did pretty well. Mr. Neimyer once made a mistake and took some rails by New Orleans and apologized for it.

Never knew of a shipment that S. P. controlled, taken out of Chicago territory via New Orleans or Texas gateway.

(1856) They couldn't have done much of it without witness finding it out, and he had no cause for any friction. Business further east was competitive. Witness, when his time expired, worked with Mr. Neimyer nearly a month without expecting any consideration in order to post him fully on the affairs of the office. All the Los Angeles business that the U. P. could control, and also all that the S. P. could control, largely went through the Ogden and Sacramento gateway. The best service could be had that way. Doesn't think the S. P. tried to route Los Angeles business through the Texas gateways to anything like the extent they did through Sacramento. The cut-off of the Rock Island to El Paso was not completed at that time, so that the lines were through Fort Worth, which is a long line, and the service not good. Some traffic undoubtedly moved through Fort Worth. There was the M. K. &

S. P. routed more Los Angeles business through Ogden than via Texas gateway.

T. and their connections, of course, but the principal lines working out of Chicago solicited for Ogden.

Division of rate.

(1857) The division of the through rate to Los Angeles from the Missouri River was about 54 per cent. for the S. P. and 46 for the U. P., practically a mileage pro-rate. Fast freight went from Chicago to Los Angeles then, in eight or nine days. Soliciting agents often made recommendations to their superior officers as to changes in rates, which finally led to readjustments. (1858) These recommendations would be made a file of, pending a meeting of the Association. For instance, if it was a transcontinental proposition, the recommendation, together with all necessary data, would be sent to the traffic manager, and he would keep it for the next transcontinental meeting, when it would be adopted, if it was a worthy proposition. If the suggestion pertained to a matter of classification, it would go to the Chairman of the Classification Committee, which met bi-annually. Out in the west, with new commodities and new manufactures springing up, such suggestions were more frequently required.

Rate changes recommended by solicitors.

The S. P. a connection of U. P.

Never attempted to move San Francisco freight via Portland.

(1859) Such competition as the U. P. engaged in for California business from the Chicago territory was as a connection of the S. P. line from Ogden west. Never attempted to move any freight for San Francisco via Portland and by boat. Never had any instructions to work that line. Apart from any antagonism to the S. P., the use of that line would have antagonized the U. P. patrons to such an extent that the Company could not afford to do it. (1860) With reference to these reports and recommendations for changes in rates, witness knew of no reason why the situation should have changed since 1901, only they would be less frequent because of the change in the condition of the country. Less new development after the country became more settled. In testifying about the short service from Chicago to San Francisco, that was not during the whole period from 1888 to 1902 that witness was connected with the U. P., but during the latter part of that period. There was a short time, during the receivership, that they got balled up on service. Best service was during the Burt administration, "which was the last four or five years of my service with the Company." The physical condition of the road had been very much improved, and that of the Central Pacific also.

Physical conditions of S. P. and U. P. much improved.

(1861) Service on the trunk lines between New York and Chicago not as rapid as it was some years ago. That is also true of the western lines. Witness didn't mean to convey the impression that the amalgamation of the agencies had anything to do with the change in service, or that Mr. Neimyer slowed up things at all. The service is now uniformly bad over all the lines. Witness thought the U. P. and S. P. gave as good service as the best in the west. Witness has not been actively engaged in the transportation business in recent years. The Can. P. differential applied from the Chicago territory. It went through St. Paul over the various lines. Knew of their going to Kansas City and moving quite large ship-

Service now uniformly bad on all the lines. U. P. and S. P. give as good service as the best in the west.

ments from there by way of St. Paul, and then taking it up over the Soo Line by way of Minot and out over the Can. P. and down to San Francisco by boat. (1862) That was done without regard to published rates. Even from the southern portions of the territory that witness had, business rarely moved by way of the southern routes. Anything that was on the Illinois Central road, they would take the New Orleans haul on, if they could, but anything off the I. C. almost uniformly moved through Chicago and Ogden. While the I. C. had a line by way of Omaha, they almost invariably hauled that stuff by way of New Orleans.

Business from I. C. moved via New Orleans. Business off the I. C. moved via Ogden.

(1862) JAMES T. MORRISON.

Morrison.

Since November, 1908, Secretary of the National Association of Implement and Vehicle Manufacturers, at Chicago. (1863) Before that, from July, 1900, witness was in charge of traffic of the Racine Wagon & Carriage Company, at Racine. Prior to that, and to November, 1895, was chief rate clerk of the Milwaukee & St. Paul at Chicago, and from 1891 to 1895 was contracting freight agent of the same road at St. Louis, where he worked only north coast business. The Milwaukee & St. Paul had no working arrangement out of St. Louis for California. Worked with the Wabash via Ottumwa, care of the Milwaukee & St. Paul at Mason City, via Minnesota Transfer, also C. P. & St. L. via Peoria; C. R. I. & P. via Minnesota Transfer; C. & A. via Chicago; and C. M. & St. P. at Chicago. Entirely via the Minnesota Transfer. Could not work by Omaha on account of having no working arrangement that way. The U. P. were working that business via Omaha or Kansas City, and over the O. S. L. When witness was in Chicago, the St. Paul worked California business by all the Missouri River lines. Presumed on California business he met the competition of the lines to California through the southern gateways. They were certainly in the field via Texas points, but witness' work in the office "would not make known to him" whether they were in the field for California business via New Orleans, or not.

Chicago. Sec'y Implement Ass'n.

Routing of California traffic.

(1864) The Texas junction points were Fort Worth and El Paso. Doesn't know whether the S. P. solicited business from Chicago via El Paso or Fort Worth, or not, but knows they took business that way that was secured by the Rock Island, the M. K. & T. or the Iron Mountain. When witness was at Racine, he was solicited by the S. P. agent, and witness' recollection is that the agent was agreeable to taking traffic either by Ogden or El Paso. The plant was located on the C. M. & St. Paul Railroad, which supplied large vehicle cars and naturally insisted upon the long haul either to Omaha or Kansas City; therefore, our connections beyond Kansas City, consisting of the Rock Island or the M. K. & T. or the Frisco, could all take the business by El Paso, or, if witness chose to let it go by Omaha, it went by the Rock Island, the Burlington or U. P. Witness cannot recall that an S. P. representative ever asked for business at any particular gateway, either Omaha, El

Paso or Fort Worth. (1865) The S. P. representative, Mr. Harmon, was employed by Mr. Neimyer. That was in 1900 and 1901. He wanted the business, but expressed no preference. The connecting lines running both to El Paso and Ogden were very actively soliciting the business.

S. P. wanted the business, but expressed no preference as to gateways.

Stebbins.

(1865) C. S. STEBBINS.

Asst. to Gen. Auditor Harriman lines.

Assistant to the General Auditor, at Omaha, of the Harriman lines, including the Pacific Mail and the P. & A. (1866) but not the Occidental & Oriental. The Secretary of that Company is in charge of its accounts, but makes certain reports to the General Auditor (Young). Witness had immediate supervision of the compilation of the figures shown in Exhibits 119 to 126, inclusive. The work was done in the name of Mr. Young. (1867) The month of October ordinarily gives the heaviest traffic. April is a heavy month, but not so much so as the fall months. April and October were selected as representative months. It was impossible to furnish statements of statistics for these months in 1900 and 1901, requested by counsel for the government, because of the destruction of the S. P. records in the San Francisco fire in April, 1906, and also because a considerable portion of the records of the U. P.'s freight business was destroyed by a fire in the record room at Omaha in December, 1906.

Prepared traffic statistics.

April and October were selected as representative months.

Records destroyed.

(1868) Exhibit No. 123 does not cover the business which was carried east of El Paso by the T. & P. and there delivered to the S. P. It is an incomplete statement, and because of the destruction of the records, it would not be possible to make up a similar statement as to freight business. March is the heaviest month for passenger traffic over the southern lines, and September over the northern. They were considered fairly representative months.

March and September representative months for passenger business.

Exhibit 125 does not include revenue accruing to the steamship lines in which the railroads are interested, but only the rail lines' proportion of the business.

(1869) Exhibit 119 does not show revenue obtained by the S. P. through the Ogden gateway on business exchanged with the D. & R. G., unless it was carried over the U. P. to Denver, and then by the D. & R. G. to Ogden. There is a considerable amount of passenger business carried from Kansas City by the U. P. to Denver, and then over the D. & R. G., but not much freight.

"Southeastern territory."

The seventh sub-division of Exhibit 120, "southeastern territory," embraces all the territory east of the Mississippi River, which is not covered by the other six sub-divisions (1870) the latter being strictly defined in the transcontinental tariffs which were then in effect.

List of Statistical Exhibits Prepared Under Supervision of Witness, at Request of Counsel For Government.

These exhibits are set out in full at close of Abstract.

Exhibits prepared at request of Government Counsel.

(1872) Complainant's Exhibit 119—revised. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between all eastern territory and western territory, sub-divided as follows: 1. All points in California, points in Nevada for which the rates are the same via Central Pacific Railway and Southern Pacific Railroad, and points in Oregon south of Portland, except points on the Willamette River north of Harrisburg, inclusive, formerly reached by the Oregon Railroad and Navigation Company's Boat Lines. 2. Portland, Oregon, and points on the Willamette River north of Harrisburg, inclusive. 3. The Orient—China, Japan, the Philippines and Hawaii. It shows westbound and eastbound traffic for month of October, 1906, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 120—revised. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between all western territory and eastern territory, sub-divided as follows: 1. Missouri River and Common Points Territory (excluding points in Nebraska and Kansas west of Omaha or Kansas City, Kansas). 2. Mississippi River and Common Points. 3. Chicago and Common Points. 4. Cincinnati, Detroit, and Common Points. 5. Pittsburg, Buffalo, and Common Points. 6. New York, Boston, and Common Points. 7. Southeastern Territory. It shows westbound and eastbound traffic for month of October, 1906, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 121—revised. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between all eastern territory and western territory, sub-divided as shown in Exhibit 119. It shows westbound and eastbound traffic for month of April, 1907, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 122—revised. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between all western territory, and eastern territory, sub-divided as shown in Exhibit 120. It shows westbound and eastbound traffic for month of April, 1907, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 123. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being passenger traffic between all territory east of eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, including also cities of Omaha, Nebraska, Kansas City, Kansas, and western territory sub-divided as shown in

Exhibit 119. It shows westbound and eastbound traffic for month of September, 1900, via Omaha, via Kansas City, via El Paso, via all routes.

Complainant's Exhibit 124. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being passenger traffic between all territory east of certain eastern boundaries, as shown in Exhibit 123, and western territory subdivided as shown in Exhibit 119. It shows westbound and eastbound traffic for month of December, 1900, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 125. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being passenger traffic between all territory east of certain eastern boundaries, as shown in Exhibit 123, and western territory subdivided as shown in Exhibit 119. It shows westbound and eastbound traffic for month of September, 1906, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 126. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being passenger traffic between all territory east of certain eastern boundaries, as shown in Exhibit 123, and western territory subdivided as shown in Exhibit 119. It shows westbound and eastbound traffic for month of March, 1907, via Omaha, via Kansas City, via El Paso, and via all routes.

Complainant's Exhibit 120-A. Statement of certain traffic carried by Southern Pacific Company lines via El Paso, being freight traffic between western territory as shown in Exhibit 119, and eastern territory sub-divided as shown in Exhibit 120. It shows total traffic for month of October, 1906, via Southern Pacific steamers, via New Orleans and rail connections, via rail connections west of New Orleans.

Complainant's Exhibit 120-B. Statement similar to Exhibit 120-A, except that it shows total traffic for month of April, 1907, instead of October, 1906.

Complainant's Exhibit 120-C. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between Atlantic seaboard territory and Colorado common points and Utah common points. It shows westbound and eastbound traffic for month of October, 1906, via Omaha, via Kansas City, and via Southern Pacific Company.

Complainant's Exhibit 120-D. Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Company lines, being freight traffic between Atlantic seaboard territory and Colorado common points and Utah common points. It shows westbound and eastbound traffic for month of April, 1907, via Omaha, via Kansas City, and via Southern Pacific Company.

Correspondence in regard to compilation of foregoing statistics.

(1873-1885) Defendants' Exhibits 1 to 8, inclusive. Correspondence between Judge Lovett and Kellogg and Severance and Auditor Young, regarding foregoing statements.

(1887) On Exhibit 119 is shown, on the first line, 3,321 tons of freight, under column 1, "via U. P. system lines to or from Portland," on which the U. P. and S. P. respectively realize the revenue there shown. That is shown as traffic to or from California, etc. As a matter of fact, none of that freight either originated at or was destined to points in California, but it had its origin or destination on the S. P. line in Oregon, south of Portland. None of that traffic had its destination or origin in California, but all in Oregon at points not reached by the boat line. It moved between Oregon and destination by way of Portland, that is, its origin or destination was east of the Missouri River, and it moved on the S. P. south of Portland via Omaha and Portland. (1888) The months set forth in the Exhibits and the territories shown therein were selected by the Government. In April the traffic is not the smallest in the year. It is a large month on the northern lines, but not so large as the fall months. (1889) Witness understood that the months of April and October would show a fair average of the year's business.

(1892) MARTIN VAN PERSYN.

Persyn.

For 25 years employed by Sprague, Warner & Company, wholesale grocers, in Chicago. With the exception of about two years, all the time connected with their traffic. Ships comparatively little to the Pacific coast. Has shipped oranges, canned goods, dried fruit, raisins, prunes, etc., east-bound. Witness shipped oranges over the Atchison. (1893) The S. P. solicits the orange trade over the I. C. into Chicago, and represented that their time was extremely good that way. The U. P. solicited by Pueblo or Omaha, but not very frequently. They solicited by Pueblo, because they knew that witness was favorable to the Atchison. Since the consolidation doesn't think the joint agent has solicited witness' coast business. Agent knew the way it was going. May have asked incidentally for some of the business, but mentioned no routing. Ships by the Atchison because, for one reason, he can keep better track of cars in transit. West-bound shipments to Oregon usually move U. P.-O. S. L.

Chicago. With Sprague, Warner & Co.

Orange shipments.

(1894-1895) Prunes and salmon originate a little further north than Portland, and most of it comes east over the N. P. Witness admitted on cross-examination that his reason for preferring the Atchison was to a considerable extent of a personal nature. Means to cast no reflection on the U. P. or S. P. Orange shipments that were formerly solicited by the S. P. were carload. Doesn't think he was mistaken in stating that they were solicited by way of New Orleans rather than the Texas gateways. Once during a shortage of cars on the Atchison, witness shipped oranges over the S. P. They did not come by way of New Orleans, however. Came in via Ogden, the D. & R. G. to Pueblo, and then the Atchison. That is an unusual route. Doesn't recall shipping any oranges over the U. P.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY

TESTIMONY FOR COMPLAINANT

VOLUME V.

Cribben.

(1897) WILLIAM H. CRIBBEN.

Chicago. Stove Manufacturer.

William H. Cribben, of Cribben & Sexton Company, stove manufacturers, in Chicago. Has been shipping to the Pacific coast for 25 years over all the routes. Has never shipped by boat. Once shipped a carload of hollowware, a good many years ago, to New York and then around the Horn. Part of the traffic to Portland goes over the U. P. and O. S. L. Has branch houses at San Francisco and Portland. (1898) Before the consolidation, both companies solicited business from witness. Doesn't know that the S. P. agent ever made any distinct request to have traffic go either way. The solicitation used to come from their offices, and also the connecting line. Thinks on two or three occasions the agent preferred the New Orleans or Texas route, on account of the long haul. The U. P. solicited by the only line they have. On one occasion the S. P. solicited Portland business by the Shasta route. Witness thought it was because they were having some little difficulty with the Short Line and O. R. & N. The boat line from Portland to San Francisco never solicited at the Chicago end of the line, but it did from San Francisco. Witness never shipped anything that way. His representatives there wrote him about it, and the boat line made a rate, but he could not afford to have his goods transferred. Thinks that was in 1893 or 1894. The two companies were active in their solicitation.

Does not know that S. P. specified a preferred route.

Shasta route.

Never used Portland route.

(1899) Doesn't think the solicitation is quite so active now. Anything witness ships now goes out to Ogden, either over the U. P. or the D. & R. G. Since the consolidation of the agencies nothing has been said about traffic going through the southern route at all. All the lines were soliciting business from Chicago to the River, and from Chicago south, and witness thinks the S. P. agent formerly expressed a preference for the southern route, but "it is

barely possible" that he may have got him mixed up with some of the other solicitors. Neimyer was glad to get the business either way. He co-operated with any of the lines leading into Ogden for business that way.

Neimyer glad to get the business either way.

(1900) Neimyer before the consolidation was not particular, of course, from the Chicago territory, whether business went by the southern route or by Ogden. Once, in discussing a change in the transcontinental tariff that witness desired, Neimyer, during the course of the conversation, wanted to know if he could give him some Portland business by the Shasta route, but witness never routed any that way. Could not transfer his goods at all. (1901) The S. P. agent solicited generally for that company. If he could get the longer southern haul, he preferred that. If not, he would take the shorter haul. The general agent solicits for the Ogden route, but the other is still open. Witness is not interested in divisions.

(1902) J. E. RYAN.

Ryan.

About twenty years shipping clerk for the Union Wire Mattress Company at Chicago. Has shipped to the coast for about 15 years over all the lines—St. Paul, some of it by Omaha, U. P.; some by Kansas City and the Santa Fe; some by Rock Island, El Paso, and on account of the nature of the equipment on the Atchison, until a little while ago, witness was compelled to use the El Paso route. The Atchison had forty foot furniture cars which were so high and the eaves so wide, they claimed they could not take them through the snowsheds on the S. P., and the Atchison claimed they could not get them through their tunnel at Raton. Consequently, a car like that was compelled to go by El Paso, until a couple of months ago, when they sent out notice they could handle them the other way. Shipments to Portland move N. P. and G. N.

Chicago. With Union Wire Mattress Co.

His cars could not go through S. P. snowsheds until recently.

(1903) Before the consolidation, the S. P. agent would come in and ask if he had any California business for them. They wanted to know how witness was going to give it to them. Sometimes he would give it by Rock Island to Denver, or the Colorado Midland, or the D. & R. G., and sometimes to the U. P. at Omaha, and they seemed perfectly satisfied whichever way witness told them. Doesn't think his business was ever solicited by the S. P. via New Orleans or El Paso. Thinks it was, however, by the I. C. Witness didn't ship that way, because the I. C. had no large furniture cars. Remembers the Can. P. differential. (1904) Four or five cars of his went that way during a period of five or six years. Has also shipped to San Francisco by Portland and boat. Doesn't remember of his Portland freight being solicited via the Shasta route, nor has witness ever shipped that way. The joint agency is soliciting by Omaha and the S. P. The Los Angeles business generally moves over the San Pedro.

S. P. agent satisfied with business through any of its gateways.

His business never solicited by S. P. via New Orleans.

Portland route.

(1905) The San Pedro man solicits the latter way. He comes in by himself. Before the consolidation, Neimyer in soliciting

for the Ogden route was satisfied, no matter over what line it reached Ogden. They had no preference. Witness has no recollection of the S. P.'s solicitation by southern routes as against the western. His business is now solicited by the various lines leading to the west, including the lines connecting with the S. P. at El Paso, as well as those at Ogden. Witness not interested in divisions. Witness shipped to San Francisco by the boat line from Portland, in order to get a better rate to San Francisco. The rate to San Francisco on folding beds was third class, new furniture $2.20 a hundred, limited to a 40 foot car. The rate to Portland on beds, value not to exceed $12, was $1.25 a hundred, 20,000 pounds minimum, and you could use any size of a car, use a 50 foot car; and the boat rate was 25 cents a hundred. (1906) It was a combination of locals; the commodity rate to Portland, and the local down. That condition continued about seven or eight months. It was ten or eleven years ago. It may have been as far back as 1893 or 1894. That condition existed only temporarily. What stopped it was, one car went down that didn't go on the regular boat, but witness thought on an S. P. boat, and they set the rate up to $2.20 a hundred. Witness paid it, and put in a claim for the difference, and it took two years to get it back; so, after all it went into the hands of the S. P. (1907) In shipping by Vancouver, witness' freight moved from Chicago over the N. W. to St. Paul, and via the St. Paul to Winnipeg; thence over the Can. P.

Solicited by the various lines.

Reasons for use of Portland route.

Dutton.

(1908) BUELL B. DUTTON.

Chicago. With Chicago Iron Store.

Since July 1, 1908, has looked after the freight matters of the Chicago Iron Store. Previous to that, from 1883, held the same position with Kelley, Maus & Company, with the exception of one year, 1884, witness thought, when he was employed by the Goodrich Transportation Company at Racine. Kelley, Maus & Company shipped to the coast over the Atchison, the Rock Island and the Burlington. Witness is not positive, but thought he shipped three carloads of iron once by New Orleans. Cannot place the date. Business to Portland generally moves over the "Q" and the O. S. L. Generally worked over the C. B. & Q. because his lumber yard was on their tracks, and they always treated him right in switching matters, so they worked together. It was witness' intention that most of the business which went out over the "Q" should go to the D. & R. G., because that Company's general agent in Chicago was a personal friend of witness'. In solicitation, the personal element controls more or less, that is, everything else being equal. (1909) Doesn't recall that the S. P. agency ever solicited by New Orleans, except the single time witness shipped that way. They were after the business, and witness would generally tell them frankly it was going out Atchison, or Rock Island, or "Q," as the case might be. Used to ship iron from Pittsburg by New York and around the Horn. Doesn't remember ever shipping any by Panama or the Morgan line. The joint agent now occasionally

Routing of his business.

S. P. never solicited via New Orleans but once.

comes in. Cannot say there is any difference in the activity of that solicitation. Don't think they are quite as active now as they were then. (1910) Couldn't say that they now solicit witness' business. Continued to ship after the consolidation just the same as before, and that was known to the joint agency. Witness is not certain that the S. P. ever solicited business of him by way of New Orleans. Witness' present house doesn't ship anything to California at all, so there is not as much occasion for the joint agents to call on him as before. Kelley, Maus & Co.'s California business was solicited by all the lines leading west and southwesterly. Doesn't remember whether he was ever solicited by the I. C. via New Orleans, or not. (1911) Cannot state positively whether the solicitation that he recalls via New Orleans was by an S. P. or an I. C. agent. Didn't pay any particular attention as to whether any of his shipments went by El Paso or not. A shipment given to the Rock Island, he let that Company take any way it wanted. Not interested in the division of the through rate. Has no recollection of Neimyer soliciting his carload business by New Orleans and stating that they didn't care for less than carload business that way.

Not positive whether New Orleans solicitation was by S. P. or I. C. agent.

(1911) DAVID N. BARKER.

Barker.

Lives at Evanston, Ill. For 14 or 15 years manager of the Chicago branch of the Jones & Laughlin Steel Company, of Pittsburgh. (1912) Has been employed by that Company in Chicago since 1875. They shipped to the coast, generally from Pittsburgh, occasionally from Chicago. Years ago, before the consolidation, the U. P. and S. P. agents solicited that business. Witness' recollection was the S. P. man solicited by way of El Paso, but didn't solicit by Ogden. The U. P. solicited by the Missouri River. Witness' traffic from Chicago moves to the coast by the Atchison, by El Paso, and by Omaha and Ogden. Shipments to Portland go G. N., and N. P., sometimes U. P. (1913) After the consolidation, witness was solicited by the joint agent, and understood it made no difference to the latter which way business was routed, so long as it went over either the S. P. line or the U. P. line.

Evanston, Ill With Jones & Laughlin Steel Co.

Routing of his traffic.

The Chicago house didn't have charge of San Francisco business from the mill, but did have Southern California, and that was solicited by the S. P. via El Paso. All of witness' California business is now routed from Pittsburg, and has been for nearly ten years. There has been very little solicitation of witness in connection with that business in recent years. Shipments from Chicago to California are very small. Any business over the U. P. must go over the S. P. to reach California. Witness' business is solicited by all the lines leading to the west. (1914) All the lines extending easterly from the three western roads solicit witness' business.

Witness' California business routed from Pittsburg.

All lines solicited.

Gallagher.

(1914) C. V. GALLAGHER.

Chicago. Formerly rate clerk for U. P. and S. P. at Kansas City.

Lives at Chicago. Contracting freight agent of the Soo Line and Canadian Pacific at Chicago for four years. Previously, for nearly five years, chief clerk in the general freight office of the U. P. and S. P. at Kansas City. Became chief clerk with the U. P. in 1900 or 1901. The office was consolidated with the S. P. later. (1915) Witness had been there a year or two when the office was consolidated. Prior to the consolidation, both the U. P. and S. P. were seeking the coast business out of Kansas City. Doesn't know how the S. P. were endeavoring to route it. Didn't know much about it. Had reports that it moved by way of Texas junction points. Sherman and Dennison were the northern Texas junctions with the Frisco and M. K. & T. That is about 600 miles from Kansas City. (1916) U. P. sent traffic via Ogden. After the consolidation, business was worked preferentially that way—the "100 per cent route." Kansas City traffic consisted of manufactured products and meat, furniture, and things like that. The D. & R. G. was represented in that territory. They preferred the Missouri Pacific and Rock Island, and Atchison to Colorado junctions. Before going to Kansas City, witness was employed in the traffic manager's office in Omaha, for about eight years, working up from junior clerk to chief rate clerk—1893 to 1900. (1917) The Shasta route occasionally had shipments by the U. P. and Ogden.

"Portland Special."

(1918) Remembers that during the receivership, a special train called the "Portland Special" was put on on account of trying to whip the Short Line into giving better divisions, witness thought, or taking away their divisions. They put on a train and handled quite a few cars daily via the Shasta route to Portland. Doesn't know how long that kept up, might have been a day or it might have been a month. Just remembers it as "one of the sensations of that period." Doesn't think it lasted very long. (1919) Remembers lumber moving out of the Coos Bay region via steamship to San Francisco, and east over the S. P. and U. P.; at least, rates were put in that way. Doesn't know whether the lumber moved or not. That was when witness was a rate clerk at Omaha. Witness didn't have anything to do with putting in or arranging transcontinental rates. That was committee work, done by Munroe (freight traffic manager), Wood (general freight agent), and Garrett (assistant general freight agent).

Coos Bay lumber.

Rate meetings.

(1920) Those gentlemen made up the Committee on behalf of the U. P. At different meetings, one or the other would attend as representatives of the U. P. The most usual way of effecting a change in rate was that the party interested went to the U. P. and asked to have a rate put in. He probably canvassed all the transcontinental lines, and tried to secure their approval of the change, and when it came up in the transcontinental meeting, they all voted on it. The proposed change might be initiated by any of the transcontinental lines.

(1921-1922) Knows there was a differential over the U. P. and its eastern connections by the Old Dominion Line of steamers from New York, or the line down to Savannah, into Colorado and Utah common points through Kansas City. In witness' position, he didn't know whether shipments were made that way, or not. Simply knew the rates were put in. Thinks those rates were the same as the differential in force over the Morgan Line and S. P. and connections. That differential was in force during all the time witness was in the rate department. Thinks those differentials were in for some part of the period from 1894 to 1900. Doesn't remember that they were taken out. Just has a general recollection that those tariffs were in. That is all. Doesn't know what the differential was that way or, by New Orleans and Galveston. From Kansas City, the Missouri Pacific, the Rock Island, the M. K. & T. and the Frisco were soliciting business by way of El Paso. What the Missouri Pacific controlled, and much of the business the others controlled, went over the Texas Pacific to El Paso. (1923) That was the short line to California by way of El Paso. The S. P. never had any line north of Denison and Fort Worth. Prior to the merger, the U. P. worked business from Kansas City exclusively by Ogden. There were a good many lines soliciting freight in the same direction via Ogden, and if some of them got it, the U. P. wouldn't get a haul.

Colorado and Utah differentials.

El Paso gateway.

(1924-1925) Some business moved from Kansas City, U. P. to Denver, and then D. & R. G. The division of the rate to Ogden was 54 to the U. P. and 46 to the S. P. The rates to San Francisco were the same by all the all-rail routes. Witness not sure about the divisions via Texas, but thinks the lines north of Sherman and Denison got 24 or 25 per cent. By El Paso thinks they were 52 and 48. Doesn't know whether the S. P. got 52 or 48. Doesn't want to be understood as testifying definitely about any of those divisions.

Rates same on all routes. Divisions.

(1925) H. W. RICHARDS.

Richards.

Since July, 1906, traffic manager of the American Radiator Company, at Chicago. Previously, for twenty years, employed by the Illinois Central Railroad at Chicago. The last six years chief clerk in the general freight department. Prior to that chief tariff clerk, and prior to that chief rate clerk. (1926) Pacific coast business moved over the Illinois Central and the S. P. via New Orleans, chiefly from Pittsburg territory, Ohio, Ohio River points, and witness thought there was a certain amount from south of the Ohio river. He was not familiar with that movement. There was an extremely small amount from Chicago, "an occasional shipment—an accidental shipment, to a certain extent." Witness thought "shippers would be foolish to send it that way. It is a thousand miles longer." It has some advantages, for example, in the case of beer from Milwaukee, steady movement of beer went during the winter months. The shorter lines are troubled with snow,

Chicago. Formerly with Ill. Cent.

Small movement from Chicago via New Orleans. Foolish to route that way.

and that is avoided by New Orleans. Doesn't think that it is often quicker by New Orleans, because of the winter delays on the northern routes. Wouldn't route business that way out of Chicago. If there was congestion on the western roads, that would be an available route.

Routing of his traffic.

(1927) The Radiator Company has plants at Litchfield, Ill., Detroit, Mich.; Buffalo, Black Rock, N. Y.; Titusville,Pa.; Springfield, Ohio; Brantford, Ont. Witness' California business moves over all the lines from Chicago to the Missouri river; the U. P., the S. P., the Rock Island via El Paso, the Atchison, the North Pacific coast lines, via New York and Tehuantepec, the American-Hawaiian Steamship Company. Ships by the latter route principally from Buffalo and Detroit. Ships nothing by the Morgan line. Too far west to get advantage of the absorption of the rates to the coast via the gulf. Has never been solicited that way. (1928)

Ill. Cent. fast freight.

Remembers the fast train 51 on the Illinois Central. Thinks its time from Chicago to New Orleans was 51 hours. That is the reason it was numbered 51. Witness not sure, but thought the I. C. got

Divisions via New Orleans.

24.7 per cent. via New Orleans, after deducting certain arbitraries, namely, witness thought, ten cents on San Francisco, and five cents on California points. The extra five cents to San Francisco was the bay toll there. I. C. didn't have a line to Omaha until 1901. Had a line to Sioux City, and a working arrangement with the Omaha line in connection with the U. P. Witness thought their division was 15 per cent. 15 per cent. is the fixed proportion east of the Missouri River from Chicago for all the lines. (1929)

Divisions via Omaha.

Thinks there was only a five per cent. arbitrary via Omaha for the bridge there. That was absorbed by the lines west of the River. On the business via New Orleans, the I. C. bore five cents of the arbitraries. That was made up of two cents at Cairo and three

Time and rates.

at New Orleans. That is merely a recollection. Takes 47 to 50 days from Buffalo or Detroit to San Francisco by the Tehuantepec route. The rate from New York is 85 cents. From Buffalo to New York is sixteen cents. In all $1.01, as against the overland rate of $1.40. Never moved any business by the Panama route. Business to Portland goes over the northern routes, the U. P., and the Burlington, in connection with the N. P. via Billings.

(1930) Uses the Can. P. for Seattle, but nothing south of that. During the navigation season, ships via the rail and lake routes. It moves via Duluth to the North Pacific coast from Detroit and Buffalo, both. Witness' policy in handling freight is to divide it among all the roads. The Illinois Central got fifteen per cent. of business originating in the Chicago territory and going over its line to Omaha. Where business originated as far south as the Ohio River, there was a special basis of divisions; but he didn't

Business on I. C. from north, central and northern part of Ill. moved via Omaha.

remember what they were. Business on the I. C. from the north central and northern part of the State of Illinois moved via Omaha, and south of that territory via New Orleans; not exclusively, but that was the preferred route of the I. C. from a revenue standpoint.

Doesn't recollect any business moving by Omaha from as far south as Memphis. (1931) Doesn't think there was any point on the I. C. from which business moved both ways. It might have happened, but the general policy and instructions were to divide the territory up. Business from some points had to go one way, and from other points the other way. Doesn't know when those instructions were given, whether it was 15 or 12 or 10 years ago. Witness was with the I. C. road at the time.

Division of I. C. traffic.

(1932) Thinks it was prior to 1901. Those instructions were issued by the general freight agent, W. E. Keepers. Transcontinental lines had agencies along the line of the I. C. at St. Louis, Chicago, Memphis and New Orleans. Witness thought they also had traveling agents. Witness didn't know what instructions those traveling agents had, but the I. C. generally moved the business as it saw fit. The shippers, as a rule, never raise the point. Doesn't recall any controversy between the I. C. and U. P. over business going by way of New Orleans. The volume originating on the I. C. for the coast was not such a great amount. (1933) Witness didn't come in contact with the western lines soliciting agents along the I. C.

I. C. coast business small.

(1933) FREDERICK L. HASTEDT.

Hastedt.

Lives in Chicago. For three years and a half contracting freight agent of the Rock Island-Frisco Line, at Chicago. Previously lived at St. Louis and for six months was employed by the C. H. & D., Pere Marquette system. (1934) Prior to that for eight years was in the general freight office of the U. P. at St. Louis. Previously employed by the Frisco-Santa Fe and previous to that with the Santa Fe, in all 25 years in the railroad service at St. Louis, before coming to Chicago. Entered the employ of the U. P. June 1, 1896. (1935) Before the consolidation, the S. P. worked very strongly to El Paso. Didn't work via New Orleans, to witness' knowledge. U. P. worked by the Missouri River. Most of the business out of St. Louis moved by Kansas City and Omaha. Efforts to move coast business by the respective agencies were certainly active. U. P. worked Portland business by the O. S. L., and Oriental business by San Francisco and Portland.

Chicago. Formerly with U. P. at St. Louis.

S. P. worked strongly via El Paso—not via New Orleans.

Oriental business.

(1936) From Portland by the P. & A. and from San Francisco by the Occidental & Oriental. Doesn't think they were then working with the Pacific Mail. The agencies in St. Louis were consolidated about the summer of 1901. After that, some business went by El Paso, and some by the Missouri River. The latter was the preferred route, in connection with the Wabash. (1937) The U. P. and S. P. agencies in St. Louis were very friendly before the consolidation. Principal competition was with the Atchison. Witness had very little experience with the Oriental business. There wasn't any great amount of it at all. The U. P. before the consolidation preferred to send Oriental business via San Francisco. All its beer business went that way. (1938) Before the consolidation,

U. P. and S. P. agents friendly before consolidation.

Competition was with Atchison.

the Atchison was witness' principal competitor. Afterwards it was the only competitor. The S. P. was, however, a part of both the El Paso and Ogden routes.

Wait.

(1939) J. J. WAIT.

Chicago. Hardware business.

For about fifteen years in charge of the freight department of the Hibbard, Spencer & Bartlett Company, of Chicago, dealers in hardware. Previously in the railroad business, and also in a similar capacity with the Illinois Steel Company, North Chicago Rolling Mills Company, and also at one time a freight broker. Before the consolidation Neimyer solicited by any route he could get it, the Ogden route, the El Paso, and witness thought there were some other Texas junctions, and he also had a route by New Orleans. Witness thought he solicited by all those routes, and that Hibbard, Spencer & Bartlett Company had shipped over all of them. The U. P. solicited by Ogden. Business to Portland moved over the N. P., G. N. and U. P. Some moved to Ogden by the D. & R. G.

Before 1901, S. P. solicited via all of its gateways.

(1940) Thinks the latter interchanged both with the Shasta route and the O. S. L. part of the time. Thinks the O. R. & N. part of the time would not accept business from their eastern connections, but witness' recollection is not clear about that. Witness does not maintain distributing houses on the coast, but ships to retailers. Ships also to a considerable extent from eastern factories, that is, sells goods and ships direct from the factories to the consumers. The eastern traffic moves very largely by the Sunset, also by the Mallory and Atchison routes. The agent of the S. P. at Chicago, before the consolidation, solicited business from those eastern factories for the Sunset route, and the all-rail lines, including the U. P., solicited it also.

Routing of his business.

(1941) Witness has also shipped by the Panama and the Tehuantepec and the old Magellan and Cape Horn routes. Prior to 1901 witness thought the rate by the Panama route was about 80 per cent. of the all-rail rate, and by Tehuantepec as low as 60 per cent. Has also shipped from Chicago and the east by the Canadian Pacific to California. Since the consolidation, Neimyer solicits coast business by any junction he can get it. Witness doesn't know what their preferred route is. When the agencies were separate, the S. P. solicited California traffic by any gateway they could get it. Shipped very little by the Sunset route from Chicago territory. Didn't regard that as a good route. Preferred the Ogden route from Chicago, or the El Paso route.

Solicited via any gateway.

(1942) Various lines extending westerly from Chicago solicited the coast business and always have. Everything shipped over the U. P. necessarily went over the S. P. to California. Witness thought he had shipped to Portland over the Shasta route, but assumed that most of the Portland business went over the O. R. & N. Shipments over the Can. P. prior to 1900, had a differential. All the lines engaged in transcontinental traffic solicited witness'

Shipments over U. P. necessarily went over S. P.

shipments from the Atlantic seaboard to California, and always have. The last shipment to Portland by the Shasta route was a long time ago. Witness could not say when. He is not interested in the divisions. (1943) As a guess, witness would say that there was twice as much business moving, by Omaha, and Ogden, and also twice as much by the Atchison, as moved via El Paso.

(1943) E. C. WILMORE.

Wilmore.

For fifteen years traffic manager of the Sefton Manufacturing Company, manufacturers of paper goods at Chicago. (1944) Before the consolidation, Neimyer was glad to get witness' business by any route. They didn't express any preference. He solicited by the El Paso route, but if he could not get it that way, he would just as leave have it by one of the other routes, but they didn't solicit witness' business from Chicago by the New Orleans route. The U. P. solicited by the Ogden gateway exclusively. Witness shipped to Portland by the U. P., the N. P. and G. N. He also shipped to California by Vancouver, via the Soo Line and the Minnesota transfer.

Chicago. Paper goods.

Before 1901, S. P. glad to get witness' business via any route.

(1945) Since the consolidation, they have expressed no preference. Witness doesn't think he ships any more by Ogden now than before the consolidation. The percentage is about the same. Also ships by the Atchison. Possibly has used the N. P. and G. N. at times. The shipments that witness remembers more particularly over the Can. P. were two or three years ago. Others were longer than that. There was no differential in the latter shipments. (1946) Not a great deal moved that way. A long while ago there was a differential. Has made some, but not many, shipments to California by the N. P. and G.N., via Seattle or Portland, and down by boat. Very little that way. It was some years ago. The N. P. and G. N. don't solicit California business that way, to any extent, and never have. Prior to the consolidation, the S. P. were glad to get business any way. They didn't argue with the shipper as to which route he should choose. If he wanted it to go by Ogden, they didn't try to induce him to ship by El Paso. Never shipped to California via Portland and by boat down. Were never solicited that way. Witness' business is solicited by all the lines extending westerly. Business that went via Portland and by boat down to California, went over the N. P.

Since 1901, no preference expressed.

Can. Pac. differential.

S. P. didn't argue as to route.

Never used Portland-San Francisco route.

(1947) W. B. HURLBUT.

Hurlbut.

Traffic manager at Chicago for the Wisconsin Pulp and Paper Mills, and looks after the traffic of 35 or 40 mills in Wisconsin. Has also been in the railroad service. His last railroad service, which was brief, was in St. Louis, with the Missouri Pacific and Iron Mountain. Before that was for a good many years in the employ of the I. C. From boyhood until 1890 employed by the I. C. Then became assistant general freight agent in Chicago, for two

Chicago. Formerly with I. C

years. From 1892 to 1896 was assistant general freight agent of the I. C. and Y. & M. V. at Memphis. From 1896 to 1900 was general freight agent for both those roads, with office at Louisville, and for the next two years was general coal agent of both those roads in Chicago. Then left the railroad service. Worked for Pacific Coast business particularly during the time he was in Memphis and Louisville.

Traffic south of Ohio river, handled by I. C. via New Orleans.

(1948) Traffic handled from points south of the Ohio River moved almost invariably by New Orleans. None of the traffic over which the witness had jurisdiction moved via the Missouri River. The I. C. is divided into two grand divisions, one north of the Ohio River, and the other south. The S. P. co-operated with witness in securing the business. The witness didn't know of any U. P. agencies at Louisville or Memphis, nor to his knowledge did they have traveling agents in that section. Some of the lines connecting with the U. P. had agencies at Louisville or Cincinnati, more particularly the latter, but doubted if they had in Memphis, except the Missouri Pacific. Presume the Missouri Pacific was working for the coast business.

(1949) When witness was in Chicago, the I. C. had no line into Omaha, and the one into Sioux City was not regarded as a gateway for western traffic. They did try to work a line with the U. P. at Norfolk, but that didn't seem to work very well. It reached the U. P. on a diagonal shoot across Sioux City. In shipping the products of the paper mill, witness uses the routes by Ogden and the Atchison. To north coast points, the G. N., the N. P. and Can. P. The mills are located on the Wisconsin Central, the St. Paul, the N. W., and the Soo. It would be very much out of the way to get that to the coast by the southern gateways. Doubts if there are any working arrangements via the southern routes east of El Paso, and witness doesn't use the latter. Thinks some business was moved from Chicago by the I. C. and S. P. while witness was there, but the I. C. made no effort to get that business that way, because they didn't get much out of it, and could figure that the service that way would not be satisfactory. Business moved over the I. C. from Cincinnati and Cleveland via New Orleans to the coast, and that business was strongly solicited. (1950) The further west he went, the stronger was the competition of the more direct routes.

No working arrangements for his coast business via southern routes.

I. C. made no effort to get Chicago business via New Orleans.

Heinrichs.

(1951) PETER P. HEINRICHS.

Chicago. Trunk business.

For two years in charge of the traffic of P. Becker & Company, at Chicago, in the trunk and traveling bag business. California traffic moves by the U. P. and the Atchison. Might have had a D. & R. G. shipment which witness doesn't recollect. Has tried pretty nearly all these devious routes going out. Has shipped less than carload via New Orleans, over the I. C. That routing was principally controlled from the coast, and occurred recently. (1952) On car shipments, witness controls the routing. Ships to Portland by the

U. P., N. P. and G. N. Matter of equipment affects shipments, because it is necessary to have a large car to carry the minimum weight required by the transcontinental tariff. Remembers one carload shipment that consignee controlled the routing of and wished sent by New Orleans, but equipment could not be furnished, and witness diverted it to the C. B. & Q., care of U. P., at Denver, which is principally the point that the "Q" carried his California business to—either there care of the U. P. or care of the Atchison. Routing of witness' traffic controlled by equipment and convenience to his plant. Had no switching facilities, and patronized the road that had the nearest depot.

Equipment affects routing.

(1953) Transcontinental rates now are higher. They are, in fact, prohibitory. Business has dwindled down to very few carload shipments. The first of last January the rate was advanced from $2.20 to $2.60. Before that the rate was $2, and from three to five years before that $1.80, and ten years ago $1.10. The less than carload rate is $3. Last year witness didn't ship more than three or four cars, whereas formerly he shipped a car or two a month. Local factory influences out in the west has had its effect, as well as rates. (1954) The joint agents express no preference in soliciting business. They cannot control the routing at all, because witness ships it the way he sees fit. That has always been his practice. The "Q" is the road whose depot is convenient to witness. The separate solicitors of the two roads never specified any particular routing. Occasionally, Neimyer would say: "Try to get us some Portland business, or some Seattle business." (1955) Neimyer never attempted to solicit by one gateway as against any other. The local lines did a lot of soliciting. The I. C. man came in every day or two, but didn't express a routing. The lines leading west all actively solicited, and do yet. All freight witness gave to the U. P. would go over the S. P. from Ogden. There are now trunk factories out on the Pacific coast that supply that section.

Advance in rates.

Local factory influence.

Trade now supplied by local factories.

(1956) C. A. JENNINGS.

Jennings.

For sixteen years manager of the transportation department of the American Cotton Oil Company, with plants all through the southern portion of the United States, excepting Texas, also at St. Louis, Chicago, Cincinnati, Montreal, Providence and New York. Manufactures cotton seed products, soap, washing powder, lard compound and cottolene. The N. K. Fairbanks Company is one of the subsidiary concerns. (1957) Some of the products require speedy transportation. Has shipped to San Francisco by Vancouver, but no very extensive amount. Thinks those shipments moved largely from St. Louis through the Minnesota Transfer. It must have been soap, which does not require rapid service. Doesn't recall Neimyer as the separate representative of the S. P. soliciting his Atlantic seaboard business. The solicitation for that would be in New York and Providence.

With Cotton Oil Co.

San Francisco-Vancouver route.

Shasta route.

(1958) Has shipped to Portland via the Shasta route from St. Louis. Is inclined to think that those shipments went through El Paso, and not by Ogden. The factories in St. Louis were located on the Iron Mountain, and those shipments were more out of compliment to that road. (1959) Where traffic can move either via New Orleans or El Paso or Ogden, the general agent solicits rather in favor of the Kansas City gateway. Witness' Oriental business now moves by the Suez. Formerly some of it went by the Pacific coast out of practically all the ports, through Seattle and San Francisco, and thinks at one time San Diego. Doesn't remember by what steamship lines. Thinks the solicitation was not by them, but by the railroads entirely. (1960) Business over the U. P. moved over the S. P. from Ogden west. There were three rail lines to California: the S. P. by way of El Paso, the Santa Fe with their connections and the S. P. to Ogden. Never shipped to San Francisco via Portland and the boat line down. Witness' business is solicited by all the lines leading to the west, including the intermediate carriers. Neimyer for 20 or 25 years in his solicitation has been practically impartial as among the several gateways.

Oriental business.

Never used the Portland-San Francisco route.

(1961) He is not interested in the divisions. Oriental business was never a large item. Has no recollection of any moving via Portland. Witness' business from Cincinnati was not solicited by New Orleans in the old days. The application of rates and the transit privileges in connection with cotton seed oil would rather operate against its back haul through New Orleans, and force it out through Chicago or St. Louis or Missouri River crossings. That would be the case in St. Louis also. (1962) Also the case as to Cincinnati. The Chicago refinery does not handle oil to the coast. Neimyer solicits witness for Chicago, St. Louis and Cincinnati business, but not for New York and Providence. From Chicago, Neimyer expressed no preference before the consolidation. (1963) Now he tries to get business by Ogden.

Witness' business from Cincinnati not solicited via New Orleans.

Sage.

(1963) G. K. SAGE.

With Fairbanks, Morse & Co.

For about six years traffic manager of Fairbanks, Morse & Company, manufacturers and jobbers of gasoline engines, etc. Largest factory at Beloit, Wis. Also one at Three Rivers, Mich.; Indianapolis, Ind.; and the scale factory at St. Johnsbury, Vermont. Previous to that, witness was connected with the Rock Island at Chicago, in the office, and also as freight solicitor. Shipped to the coast by all the available routes. Doesn't recollect shipping by the Morgan Line from New York, except possibly in cases where they had purchased goods from New York houses. (1964) Has distributing agencies at Los Angeles, San Francisco, Portland and Seattle. Moves business to Southern California "via Ogden and El Paso, first via the Missouri River gateways." Some of the pipe and that sort of thing, from Pittsburg and Youngstown, has in the past gone by New Orleans, but now it all goes by Missouri River gateways. Portland business goes over the northern lines; some over the U. P.

Uses Ogden, El Paso and Mo. River gateways.

Before the consolidation, when witness was with the Rock Island, he worked business via El Paso, and worked both independently and with the S. P. His long line to Southern California was via El Paso.

(1965) Before the line to El Paso, witness worked business via Fort Worth, in connection with the T. & P.; sometimes independently, and sometimes with the S. P. The Rock Island worked Portland business via Ogden in connection with the D. & R. G. or the Colorado Midland and the Short Line. Remembers that for a time he had a route to Portland via the Shasta. There was no other way in which the S. P. could participate in Portland business. Always worked in connection with the Short Line, however, except that for a time, when there was trouble of some kind and the rates taken out that way, then witness worked with the Shasta. (1966) California business was routed via the D. & R. G. via Ogden. Turned traffic over to the U. P. at Omaha when it was so routed. Doesn't recall that the general agent specifies any route. Witness generally sends it via Ogden, if he were not going to ship by the Atchison. Thinks soliciting agents are useful to railroads in getting business.

Shasta route.

(1967) That is not so much true, however, with a large shipper that maintains a traffic department. Two roads competing for business at the same rate, one maintaining a solicitor, and the other not, the former would get the more business. Witness' recollection as to whether shipment moved to Portland over the Shasta route is not very clear. Remembers there was a route that way. Could not swear any shipments moved; however, there are a good many routes, on paper, over which traffic does not actually move. (1968) Solicited for the Rock Island prior to February, 1902. Ships nothing from Beloit to California via New Orleans. Thinks no rates have ever been in effect that way. (1969) Thinks there have been a few shipments from Vermont by way of the Gulf, but they are very exceptional. There were some commodities that witness bought from a Pittsburgh house which they sold delivered; routed that themselves, and witness thought that some of that went around by the southern route. Now witness buys from another house at Pittsburgh, and routes the shipments himself via the Missouri gateways. The New York shipments that went by the southern route were also routed by the sellers.

Paper routes.

No rates effective from Beloit via New Orleans.

COMPLAINANT'S EXHIBITS 127 TO 149, INCLUSIVE.

Exhibits.

It is stipulated "that the Oregon Short Line Railroad Company subscribed for and took the proportion of the $35,296,623 of additional preferred stock issued by the Southern Pacific Company, as shown by this statement (Complainant's Exhibit 127), which it was entitled to take by reason of ownership of preferred and common stock of the Southern Pacific Company, and thereby acquired sufficient stock so that it now owns the same proportion of the total capital stock of the Southern Pacific Company that it owned before said additional stock was issued." (1970) Com-

plainant's Exhibit 127. List of securities issued by Southern Pacific Company since December 31, 1906, to and including December 17, 1908.

Complainant's Exhibit 128. List of securities issued by Union Pacific Railroad Co. from December 31, 1906, to December 17, 1908, inclusive. (1971) Complainant's Exhibit 129. Directors of Union Pacific Railroad Company, elected October 8, 1907, and October 13, 1908. (1972) Complainant's Exhibit 130. Oregon Short Line Railroad Company directors elected October 9, 1907, and October 14, 1908. (1973) Complainant's Exhibit 131. Directors of Southern Pacific Company elected April 3, 1907, and April 8, 1908. (1974) Complainant's Exhibit 132. Pacific Mail Steamship Company directors elected May 29, 1907, and May 27, 1908. Complainant's Exhibit 133. Oregon Railroad and Navigation Company directors elected September 26, 1907, (1975) and September 10, 1908.

(1976) Complainant's Exhibit 134. Occidental and Oriental Steamship Company directors elected July 10, 1907, and July 8, 1908. San Francisco and Portland Steamship Company directors elected June 10, 1907, and June 3, 1908. (1997) Complainant's Exhibit 135. San Pedro, Los Angeles and Salt Lake Railroad Company directors elected November 16, 1907, and November 16, 1908. (1978-1979) Complainant's Exhibits 136 to 149, inclusive, forms of Oregon Short Line and Union Pacific Railroad Company proxies.

Stubbs.

(1990) J. C. STUBBS, (2).

The Canadian Pacific differential was put into effect by agreement with the transcontinental lines in December, 1887. Witness thinks it is almost certain that he was present at the meeting of November 5, 1887, at the Grand Pacific Hotel in Chicago, when it was decided to organize the Transcontinental Association. Witness represented the Southern Pacific Company at the time. "In November, 1887, it was understood that the Canadian Pacific should adopt differentials below the all-rail routes from New York on the 30-cent scale, and from Chicago, 20-cent scale of difference. That is to say, the first-class rate from New York, via the Canadian line, would be thirty cents (1991) lower than the all-rail rate, and from Chicago twenty cents lower, and so on down to five cents on the lowest class. Whenever, so far as these differentials are being discussed, he refers to the Canadian Line, he means the rail line to Vancouver and the boat line from there to San Francisco. The differentials applied both ways.

Can. Pac. differential.

"The differentials for Buffalo were ninety per cent. of the New York rate, and Toledo and Detroit eighty-five per cent. of the New York rate. That I understand to be ninety per cent. and eighty-five per cent., respectively, of the Canadian Pacific's differential rate to New York. * * * The record says that the Northern Pacific claimed the same differentials through Tacoma by rail and water, and their claim was allowed and agreed to." There was an arrange-

N. P. differential.

ment with the Pacific Mail, which represented the Panama Route, whereby certain space was rented in their steamers by the constituent members of the Association. Witness does not know how long the arrangement ran—not more than two or three years. Steamship space rented.

"Q. And after that lapsed did the rail lines have any control over the rates by the Panama route? A. Not that I recall." The Panama Route mentioned above was made up at that time of the following lines: (1992) Pacific Mail, New York to Colon, the Panama Railroad across the Isthmus of Panama, and the Pacific Mail from the west coast of Panama. At that time witness thinks the Pacific Mail was on both coasts. "Later on the persons interested in the Panama Railroad established their own steamship line from New York to Colon, and the Pacific Mail retired from that service. After that period, (I cannot recall the date of its beginning) the Pacific Mail operated the steamships in connection with the Panama Railroad from Panama on the west coast to San Francisco only." Constituency of Panama route.

Witness does not admit that by the contract above referred to there was a control exercised by the rail lines over the rates by the Panama route, "but there was no agreement by which the railroads had any influence upon the rates used, quoted, or carried by the Panama route after that time, as I recall it. * * * The mere fact that the Southern Pacific later on, as I understand it, purchased a controlling interest in the Pacific Mail Steamship Company's stock did not give the railroads any control over the rates. That is to say, I, as the chief traffic officer of the Central Pacific or the Southern Pacific System, never had any control over, or anything to do with, the rates by the Panama." Witness never exercised any control over rates by the Panama.

(1993-1994) Witness does not recall of a move later on agreed to by the transcontinental lines other than the Union Pacific, to make a similar contract to rent space on the ships of the Panama Route. His attention is called to statements made by him before the arbitrators of the Canadian differential, found on page 82 of the record of the arbitration (Exhibit 150), and also to the statement of Mr. Kerr on page 13, and witness stated that it was a fair inference that the refusal of the Union Pacific Railway Company, or its receivers, to unite in the agreement, caused it to fail. "Q. Was the Union Pacific acting independently of the Southern Pacific at that time, in 1896? A. Always." Can. Pac. differential.

On May 17, 1888, a meeting of the Association was held in San Francisco, and the differential previously given to the Canadian Pacific not having given that company what they claimed to be a reasonable share of the traffic, they applied for an increase on the basis of 40 cents on first-class and 10 cents on tenth class, and lower between San Francisco and New York, and a committee was appointed to consider the matter.

(1995) A resolution was adopted by the committee to the effect that the differentials should be such as to secure to the Canadian Pacific a fair and reasonable share of the overland tonnage, and that they should be so modified as to bring it about. The chair-

Resolution as to changes in differential.

man was authorized to negotiate for the American Lines with the Canadian Pacific and make such changes from time to time as in his judgment were warranted, with the understanding that the same differentials should apply to St. Paul and Minneapolis traffic via the Northern Pacific—it being understood that the differentials should apply via the ocean routes only.

The following changes were thereupon made in the differentials: "From New York they were made on the 40-cent scale; from Buffalo, 32 cents; Detroit, 30 cents; Chicago, 25 cents; St. Paul and Minneapolis, 15 cents. That scales down to: On the tenth class

Changes made.

7½ cents from New York, 7 cents each from Buffalo, Detroit and Chicago, and 5 cents from St. Paul and Minneapolis." There were some slight differences in the eastbound record to Chicago. "To Chicago, he (Mr. Kerr) states that there appears to have been a 24-cent differential on first-class; second-class, 19; third, 16; fourth, 15; fifth, 13; sixth, 13; seventh, 13; eighth, 10; ninth class, 9; and tenth class, 7." The westbound and eastbound differentials as modified continued until July, 1889, when they were changed, at the instance of the Southern Pacific—according to this record—that is merely

Motion of S. P.

Mr. Kerr's statement as to who proposed it. The fact that Mr. Kerr stated that it was witness who moved for the reduction does not indicate that the Southern Pacific was alone the proposer of it, or even the instigator of it.

(1996) "Q. What figure were the differentials placed at as the result of that meeting? A. This is the scale 'From'—what is called the first-class scale: Chicago, 17½ cents; Detroit, 21; Pittsburg, 22; Atlantic seaboard, 28; scaled down to 5 cents to or from all points on the lowest class—E. Wool, in grease, 7½ cents. That means 7½ cents per 100 pounds." In July, 1889, these differentials were again changed and the substitute differentials were to run for three months. They were afterwards extended to October 1,

Allowance in lieu of differential.

1890. In 1891 a new proposition was made to the Canadian lines, whereunder the Canadian Pacific was to receive an allowance in lieu of their differential. This arrangement lasted through the year 1891, when the Canadian Pacific restored its differentials, under resolution of the Association at the New York meeting January 14, 1892.

Association dissolves and Can. Pac. adopts 10 per cent differential.

At the end of 1892 the Transcontinental Association was dissolved, and the Canadian Pacific adopted the basis of 10 per cent. differentials. The 10 per cent differential was adopted of its own motion and without the consent of the other lines. (1997) In going over the records in the hands of witness for the purpose of refreshing his recollection, he states that he sees something that will probably answer a question asked him a while back as to how long the Pacific Mail did the work on the Atlantic side. "I see here that the Columbia line opened in 1893." Since 1893 there has been no composition of the differences with the Panama road. "They stand in the market ready to take business that offers at any rate that will take it."

Arbitration of Can. Pac. differential.

Witness recalls the arbitration of the question as to whether the Canadian Pacific should continue to make the 10 per cent. lower rate. The arguments were made in Chicago. The decision was made October 19th, 1898. (1998) The Canadian Pacific with the exception of one year when they were granted an allowance by the American lines, had in, either what is technically termed a differential, (that is, by consent), or a lower rate maintained independently by them, to San Francisco and return, by way of Vancouver, from the last part of 1898—a period of eleven years. The Canadian Pacific desired to continue that situation and the matter was submitted to arbitration. Witness gives a list of the American transcontinental lines, as shown by the record of arbitration. They are: The Santa Fe, the Burlington and Missouri River in Nebraska (which is the Burlington Railroad west of the Missouri River), the Rock Island, the Colorado Midland, the D. & R. G., the M., K. & T., the Missouri Pacific, the Northern Pacific, the O. R. & N., the O. S. L., the Rio Grande Western Railway, St. Louis and San Francisco Railroad, the S. P., T. & P. and U. P.

Quotation from argument of witness as to competition between carriers by water and carriers by rail.

(1999) Reference is made to page 70 of the same record, where witness gives an example of competition in whole or in part between a carrier by water and a carrier by rail, and attention is called to his statement to the effect that "another example is found on the Pacific coast between San Francisco and Portland, between San Francisco and Los Angeles, Santa Barbara and San Diego, where the service can be done entirely by rail or entirely by sea." Witness thought that the Pacific Coast Steamship Company boats was the only line running between San Francisco and Los Angeles, Santa Barbara and San Diego at that time. That is the same line that came down from Vancouver. "There were occasional outside boats; and there were always the steam schooners. They were more potential in their competition coastwise on freight than the Pacific Coast Steamship line."

Boat service between San Francisco and So. Calif. ports

At that time the line owned or controlled by the O. R. & N. was being run between San Francisco and Portland. Thinks the Dollar Line was there too. Does not know whether the Pacific Coast Steamship Company also put in at Portland at that time on their way to San Francisco or not. Witness is requested to read from his statement to the arbitrators and reads as follows: "The Great Northern, at Seattle, the Northern Pacific at Tacoma and Seattle, connect with the same steamers for (2000) San Francisco, as the Canadian line connects with at Vancouver. The distance from Seattle is 804 miles as against 833 miles from Vancouver. These are distances that are taken from the official schedule of distances published by the Pacific Coast Steamship Company. The Oregon Railroad & Navigation Company connect at Portland, Ore., with steamers for San Francisco which are owned jointly by the Oregon Railroad & Navigation Co. and the Pacific Coast Steamship Company. It also connects with the Great Northern Ry. at Spokane and with the Oregon Short Line Railroad at Huntington. Huntington

Quotation from argument.

Mixed water and rail routes to San Francisco.

is on the Oregon Short Line. The latter, in turn, connects at Granger with the Union Pacific; at Salt Lake with the Rio Grande Western, which, in turn, connects with the Colorado Midland, and Denver & Rio Grande, and at Pueblo, Colorado Springs and Denver, they connect with all these systems. The distance from Portland to San Francisco is 653 miles against 833 from Vancouver. These steamship connections which are actual and not merely possible, form the following through lines to San Francisco, which correspond to the Canadian line in the respects described and are therefore justly entitled to every consideration as an offset to the alleged better facilities of other lines, that the Canadian line is entitled to on the same ground, namely: From Minneapolis: First, the Great Northern Railway to Seattle and San Francisco. Second, the Northern Pacific Railway to Tacoma, Seattle and San Francisco. From Omaha: (There are three routes from Omaha) First, The Union Pacific Railroad via Granger, the Oregon Short Line Railroad and Oregon Railroad and Navigation Company to Portland and San Francisco. Second, The Burlington out through Denver, the Denver & Rio Grande, Colorado Midland, Rio Grande Western, Oregon Short Line Railroad and Oregon Railroad & Navigation Company, to Portland, thence to San Francisco. Third, The Rock Island, following the same route through Colorado Springs and Denver, thence on via the Colorado Midland, Denver & Rio Grande, Rio Grande Western, Oregon Short Line and Oregon Railroad & Navigation Company, to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco. From Kansas City: There are three lines from Kansas City: First, The Union Pacific Railroad through Denver, Cheyenne, Granger, Oregon Short Line to Huntington, Oregon Railroad & Navigation Company, to Portland, thence via Oregon Railroad & Navigation Company's steamships to San Francisco. Second, The Atchison, (2001) Topeka & Santa Fe Ry. to Denver, Colorado Springs to Pueblo, where they connect with the Denver & Rio Grande and Colorado Midland, in connection with the Rio Grande Western, thence via Oregon Short Line Railroad and Oregon Railroad & Navigation Company to Portland, thence via Oregon Railroad and Navigation Company's steamships to San Francisco. Third, the Missouri Pacific Railway; the same way. These American mixed rail-and-water lines do not exist merely on paper. They are open and in daily use for both freight and passengers. They are effectively worked against the all-rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah and Montana. Some of them are preferentially worked for San Francisco's trade with St. Paul and Minneapolis and points further east—the Great Northern works them." The mixed rail and water line that worked into Utah from San Francisco was made up of the Navigation Company's steamers to Portland, O. R. & N., Oregon Short Line. The direct all rail route over which most of

Mixed water and rail routes to San Francisco.

Those lines worked for San Francisco trade with Oregon, Washington, etc.

the business from San Francisco to Utah moves is the Central Pacific Line, San Francisco to Ogden direct.

(2002) The mixed rail and water lines competing for Oregon freight from San Francisco are the Navigation Company's steamers to Portland and then the Navigation Company's rails into Oregon, or the Southern Pacific Company's rails south of Portland. The rail and water route to Oregon would be the steamships between San Francisco and Portland, and the O. R. & N. rails. Against that would be the all-rail line of the Southern Pacific. As to the competitive business handled into Washington there would be the same routes between San Francisco and Portland, and to them would be added the routes via Tacoma and Seattle—the Pacific Coast Steamship Company in connection with the Northern Pacific at Tacoma, or in connection with the Great Northern at Seattle. At that time the O. R. & N. witness thought had a line from Portland up to Spokane, the same as now. The Great Northern had an entrance into Portland over the O. R. & N. for transcontinental business.

(2003) "My understanding is—it isn't worth much, though, because I was not officially connected with these lines—that for points east of Spokane on the Great Northern or the Northern Pacific, they exchanged with the Oregon Railway and Navigation Company. Now that may not be true, but I think it is true." Witness is requested to read from the record of arbitration: "I submit, where would the Union Pacific that makes in connection with the Central Pacific the shortest and most direct line, that is the oldest line to San Francisco—where would that company be to-day if their agencies were to carry out the program indicated for his agencies by Mr. Kerr in that testimony? Would it get any business that was competitive as between themselves and the Santa Fe or the Missouri Pacific or Burlington or Rio Grande Western roads? In three months, notwithstanding all its natural advantages, more than 50 per cent. of its business would leave its rails; if it would get anything at all that possibly could go over another route." That is a pretty strong statement made there. Probably he would not make it to-day. Probably he would not have made it if he had been in any other position (2004) than that of an advocate trying to make things as strong as possible. Where business is competitive, soliciting agencies are of great value in securing business for the lines that they represent.

Effect upon Union Pacific.

Statement as to value of soliciting agents.

Witness is requested to read from record of arbitration, beginning at the bottom of page 95: "Blot out from the map, remove from the earth's surface this single line of railroad, the Central Pacific between Ogden and Sacramento, the pioneer road—would any of these eight American lines entertain the proposition which is involved in the Canadian line's contention for a moment? Does the existence of the Central Pacific Road and its operation as a part of a through all-rail line (in which some of the integral parts of the through line via Portland, which are part water and part rail, are interested), alter the rights, the

Effect of extinction of Central Pac.

equitable rights of the Portland mixed lines as against the Canadian line or against any other competitor? We contend that it does not—that as a matter of right, of equitable right, as well as a matter of law under Justice Brewer's decision in the case of the Chicago-Northwestern, plaintiff in error against John Osborn, and the same plaintiff in error against A. J. Junod, a through line is a line, is a unit, regardless of whether part of it may be used in forming another through line even if it be a rival through line. The reasonableness of this proposition is manifest. Any other view would deprive certain individual carriers, not only from participation in, but also of an opportunity to compete for a given traffic. To illustrate: If the Oregon Short Line (indicating on map) running from Huntington to Granger and to Salt Lake, were deprived of a connection for the purpose of making a through line to San Francisco, via Portland with the Union Pacific at Granger, or with the Rio Grande Western at Salt Lake City, because those roads respectively had physical connection with the Central Pacific at Ogden, the Oregon Short Line would be deprived of all opportunity to compete for a share of the San Francisco traffic.

A through line is a unit.

O. S. L.'s route to San Francisco.

"Q. That was a statement that you made of your view with reference to competitive through lines, wasn't it? (2005) A. That was my argument to win the case that I was advocating. Q. Well, you were endeavoring to give the arbitrators your best judgment? A. I was endeavoring to convince them that the Canadian Pacific had no right to a differential. Q. Well, you succeeded, as you usually succeed? A. I think so. Q. Turn over to page 97. Down towards the bottom of the page—your reference to the San Francisco community. A. Shall I read? Q. Yes.

Witness' argument.

"A. (Reading:) 'In May, 1888, the right of the Northern Pacific to make by its mixed rail and water line between Minneapolis and St. Paul and San Francisco the same rates as were made by the Canadian Line between the same points was recognized and conceded by the Canadian Line by vote of its representative at a meeting of the Trans-Continental Association in San Francisco, but it long ago fell into disuse. The Northern Pacific found it would not work, for immediately upon the suggestion of the proposition the Oregon Railway & Navigation Co. came in and wanted the same advantage. Since then the Great Northern has been completed. Give the Northern Pacific a differential and can you withhold it from the Great Northern? Give it to the Great Northern and Northern Pacific and how can you withhold it from the Oregon Short Line and Union Pacific? If you give it to them how can you withhold it from the Kansas City lines? The Great Northern, Northern Pacific, Oregon Railroad & Navigation Co. in connection with the Union Pacific, which means the Union Pacific, the Burlington, the Rock Island, the Missouri Pacific, the Atchison, Topeka & Santa Fe, all in this market working a mixed rail-and-water line on a differential rate and where would rates be? How much business would the other lines get? What would the all-rail lines do with the San

Differentials follow to competing lines.

Francisco community, who began with the use of the Cape Horn route, accustomed to subdivide its business and to ship a large part by water around Cape Horn; accustomed to divide it between the Cape Horn sailing vessels and the Pacific Mail Company previous to the opening of the overland route; accustomed to put a large share on the sailing vessels, a small share on the Panama route and a still smaller share on the overland roads simply to avail themselves of differences in rates? Touch this question. Introduce differential rates with any of the American lines, and it must be manifest to any practical railroad man who knows the interdependence of these rates and these lines, that they will operate exactly as a cut rate. Let the rate be cut on the Great Northern and it goes down to the Gulf of California. Let it be cut on the Northwestern and it goes down to the Gulf of Mexico.'"

Introduce differential rates on the American lines and they will operate as cut rates.

(2006) Under like circumstances he would reiterate that statement today. It would make all the difference in the world whether the cut rate is what is technically called a differential—that is, put in by agreement, or whether it is put in as an act of competition. If it is put in by agreement then the lines consenting are bound to hold to that agreement until they take the proper steps to annul it. There are such things as agreed differentials. Referring to his argument made before the arbitrators witness states: "If one of these mixed lines claimed a differential, then there were so many other mixed lines that could be created that they would immediately come in and demand a like differential and would so involve the whole traffic that there would be nothing left for the all rail lines. It would disorganize the whole situation. It would shatter the whole rate fabric; that was the contention, that was the gist of the argument there."

Demoralizing effects of differentials.

Witness thinks that the effect of maintaining the lower rate by the Canadian Pacific after the other lines ceased to agree to it, was to (2007) cause the other lines to secretly cut the rates. At the present time if the Canadian Pacific put in the 10 per cent. differential all the other lines would meet it openly with published rates.

Can. Pac. differential caused secret rate cutting.

The necessary effect of putting in such a rate as the Canadian Pacific had in at that time, would be worse than merely to cause a reduction of the published rates by competitive lines. "It would eventuate in destructive rates—a war of rates that would be quite as much damaging, if not more, to the commercial communities than to the railroads. If one line started out to put in lower rates than its competitor, or its numerous competitors, and would put in a lower schedule, the other lines would meet it. Then the original line would go lower; that would be met; it would go lower still, and that would be met, until rates became beyond the power of the average line to carry for any great length of time; and in the meantime all commercial conditions are upset and trade relations destroyed."

Would eventuate in rate destruction.

(2008) Witness is again requested to read from the record of arbitration: "The Union Pacific-Oregon Short Line's Portland route is practically of the same length as the Cana-

Length of routes compared.

dian Line's Vancouver route from Portland, Maine, Boston and New York City, and is only 260 miles shorter from Philadelphia, but these differences would be reduced to insignificance were the Canadian Line to use its Minneapolis route." The route referred to is the one to San Francisco. Witness further reads from record as follows: "We now pass from the American part water and part rail lines via Seattle and Portland, which work through Minneapolis, Omaha and Kansas City gateways, to the consideration of other American part water and part rail lines, whose ocean service is performed on the Atlantic side and which work via Mexican Gulf Ports. Their San Francisco trade is confined almost wholly to that part of it which is done with the Atlantic seaboard territory. They are, therefore, much more restricted in the territory laid open to their competition than the Canadian line is. These lines, like the eight already reviewed, present physical features which are substantially similar to the characteristics of the Canadian line and pleaded by it in support of its contention. If there is a difference, it is of degree only and in degree the advantage is with the Canadian line as compared with them. They are the (2009) Southern Pacific 'Sunset' lines: Morgan Steamship Line, New York to Algiers (New Orleans), 1,800 miles; thence via rail to San Francisco, 2,489 miles; total, 4,289 miles. Texas & Pacific Gulf Line: Cromwell Steamship Line, New York to New Orleans, 1,800 miles; thence via rail to San Francisco, 2,455 miles; total, 4,255 miles. 'Santa Fe' Gulf Line: Mallory Steamship Line, New York to Galveston, 2,300 miles; thence via rail to San Francisco, 2,666 miles; total, 4,966 miles. They all do San Francisco business too at equal rates. They compare with the Canadian Pacific's line from New York in this wise: The Sunset line is longer by 240 miles; the Texas & Pacific Gulf line is longer by 206 miles; the Santa Fe Gulf line is longer by 917 miles.

"From the territory north, northwest and east of New York City, the difference in distance favors the Canadian line still more, because it takes the business up and forward directly by railroad, while we have to bring it down to New York and transfer it to steamer. From the territory west, southwest and south of New York City, the differences are the same as from New York City, as the traffic moves via New York City, to reach any of the lines contrasted. * * * (2010) Q. * * * You have read these figures that show that the Gulf routes from New York to San Francisco are somewhat longer than the Canadian Pacific route from New York to San Francisco. A. Yes. Q. And I say that difference in length against the northern routes to San Francisco by rail and water applies likewise when they are compared with the Portland route as with the Canadian Pacific? A. Yes. I would answer that question, practically so. * * *

"Q. Turn to page 102; next to the last paragraph, commencing 'All these Gulf lines present.' A. (Reading:) 'All these Gulf lines present the same physical characteristics (some of them in an exaggerated degree), as are set forth as peculiar to the Canadian line.

Undoubtedly they have equal rights with the Canadian line to have a share or a part of the traffic set apart for their exclusive enjoyment. By contrast the equities would be with the Texas and Pacific and Santa Fe, rather than with the Canadian line, and we claim the same thing for the Sunset line. Having the same kind of a line, the same opportunities and the same necessities to obtain by fair means a reasonable share of traffic, a differential in their favor would operate to increase their respective takings in like manner and to the same extent that a differential in its favor would operate to increase the volume of traffic taken by the Canadian line. Having rights, equal to the right of the Canadian line, if the latter is, under all circumstances entitled to a differential, they are equally entitled to a differential.' Q. That was a truthful statement, wasn't it, in so far as it is not a matter of argument but of fact? A. At the time, I believed it. Still, it is a matter of argument. * * *

The Gulf lines have equal rights with the Can. Pac.

Part of his argument.

"Q. Page 108, at the top of the page. Just read that, will you? A. (Reading:) 'Reverting again to the comparison between the Sunset Route and the Canadian line: the Sunset Route competes in this New England territory, the great manufacturing center for cotton piece goods, domestics, boots and shoes, nails and many other commodities with which you are all familiar. It competes with the (2011) all-rail lines on a dead level equality of rates. The Canadian line takes up goods at Boston, or at any of these New England points or any of the interior New York points, in cars; transports them without breaking bulk to Vancouver, transfers them from car to ship and delivers them at San Francisco. The Sunset line and all the Gulf lines take these goods from Boston, as a rule, and put them aboard of the steamers of the Metropolitan Steamship Company; they are delivered by that Company on their pier, in New York City; they are then lightered to the Mallory steamship pier or to the Morgan steamship pier, reloaded into the vessels of the Gulf lines, transported to New Orleans or to Galveston, then transferred from vessel to car, and carried to San Francisco. There is evidently a disparity between the ability to handle these goods; but in whose favor is that disparity? Is it the Canadian line?' "

Further comparison between Sunset route and the Can. Pac.

One disparity he was discussing there is the necessity that the Sunset has of breaking bulk twice. The Sunset line still takes most of its New England business from Boston and New York by boat, and that which is taken there by rail is unloaded and loaded on the ships there. So that the same disparity exists, so far as the necessity of breaking bulk twice is concerned, whether the traffic is taken into New York by rail or steamer—that is right, provided the cars run through over the Canadian line. The Union Pacific Portland line to San Francisco would only have to break bulk once at Portland. The same handicap, if it is a handicap—would exist as against the Sunset route, in favor of the Portland route, as he pointed out, exists when it is compared with the Canadian Pacific..

Disparity in ability to handle traffic.

"Q. Turn over to page 119. * * * (2012) A. (Reading:) 'They (differentials) are not used for San Francisco traffic with Montana,

Montana, Colorado and Utah business.

Utah and Colorado, as between the all-rail lines and the mixed water-and-rail lines. There is much valuable business in Montana, Colorado and Utah, competed for by these direct Central Pacific, Union Pacific, Denver & Rio Grande lines and by the Oregon Railroad & Navigation Co. and Oregon Short Line, and for Montana by the Great Northern and the Northern Pacific, as well as the Oregon Railroad & Navigation Company and Oregon Short Line, but we all work on a dead level equality of rates.' Q. Has that equality of rates always continued, as far as you are advised, between the rail and water combined lines and the— A. Well, as I meant it at the time, and as I guess it was understood by the arbitrators, it did not mean that the rates from San Francisco to Ogden, for example, were the same as the rates from Omaha to Ogden; that is that competition, but as between the various routes from San Francisco that could be made, there was the dead level of rates." So far as witness knows that has always been maintained.

That competition from San Francisco was on a dead level of rates.

"Q. Now turn to page 139. * * * A. (Reading:) 'Is it apparent from this showing'—that is, the showing as to the growth of the State of California—'that the Canadian line has any equitable ground for claiming that its right to the smallest part of San Francisco's trade is paramount to the rights of the American lines to do, and enjoy, the whole of San Francisco's business with other points in the United States? Is its competition desirable and helpful; promotive of trade? Is its presence in the San Francisco markets welcome to the San Francisco merchant? We aver that it does not introduce any necessary element of helpful competition which promises a freer and fuller exchange of commodities between San Francisco and its eastern markets of supply and consumption. A single glance at the map will prove that San Francisco is served by a sufficient number of independent American lines, not only to handle all her freight, but to do so if it were (2013) increased many times over its present volume. I refer to these lines out via Portland, Seattle and Tacoma; out via San Diego, not touching the Central Pacific; besides the Central Pacific and Southern Pacific lines and added to these the Pacific Mail Steamship Company, the original line, in connection with the Panama route, and the vessels of Cape Horn.'" Witness thought that argument stated the facts as he understood them at the time.

San Francisco has ample service without the Can. Pac.

"Q. Now read on a little further on page 140. A. (Reading:) 'The history of the operation of these lines proves beyond question the impossibility of any combination without the competition of the Canadian line which would not be possible with it. The public interest is fully protected in this respect by the natural, uncontrollable, competition of the American lines, so that the Canadian line can not find any substantial foundation for its claim of right to share in this traffic in the assertion that its services are necessary or desired by San Francisco merchants either to move the traffic or maintain helpful competition.'" Witness believed that was a good argument, and under the circumstances, a truthful state-

Public interest fully protected.

A good argument under the circumstances.

ment. Those circumstances, he thought, had not changed—all the competition that ever existed exists today. At that time witness did not have charge of the line from Omaha to Portland, but as a line matter he exercised practically as much control then as now.

S. P. had the advantage of the U. P. at Ogden.

(2014) The Union Pacific could not use the rail line from Ogden to San Francisco without the consent and co-operation of witness as representing the Southern Pacific. "Q. And on the other hand you could not use the line from Ogden to Omaha without the consent of the Union Pacific representatives? A. That is true, but I had the advantage of the Union Pacific. I had another string to my bow. Q. And the Union Pacific had the advantage of you, in that they had another string to their bow, in the line by Portland as you have demonstrated by your argument. A Yes for what it was worth. But there is a good deal of difference between the efficiency of the two lines respectively. * * *

Volume of traffic not so great as to tax American lines

"Q. Now, read a little further on page 140. * * * A. (Reading:) 'Moreover, the volume of the traffic is not so great as to tax the capacity of any of the American lines to move it safely and expeditiously, while there are six of the American lines, all-rail and mixed water-and-rail, over which it can move to and from the State of California, under as favorable conditions, approximately, as it can move over the Canadian line, and we contend that it is not equally just and right to all concerned to require these American lines, or any of them, under such circumstances, to surrender, through the device of a differential or any other expedient, any portion of this trade which may otherwise seek their line.' Q. That is enough. A. I had better add that other sentence, hadn't I? Q. Do you want to read a little more? A. (Reading:) 'We are talking about *right* now.' Q. In so far as the paragraph you have read involves statements of fact, it was a truthful statement, wasn't it? A. I think so, with the probable exception that would follow the increased tonnage. * * *

Further comparison between Sunset and Can. Pac.

"Q. Now turn to page 196. * * * A. (Reading:) 'Now, the Canadian line adheres to its allegation of physical disability by reason of being a broken line, as its chief (2015) and almost its only dependence in its case here. The Sunset line has been shown to you—and I take it as the extreme case; I take it because the Sunset line is the great bugbear in the eyes of the Canadian line—has been shown to you to be physically, in respect to the disabilities described by the Canadian line, a weaker line than the Canadian line. In the first place the ocean haul from Vancouver to San Francisco, is eight hundred and some odd miles—I have forgotten—eight hundred and fifty or sixty miles. It is 1,800 miles from New York to New Orleans—more than double. Compare the line, New York to San Francisco, via the Sunset, New York to San Francisco via the Canadian line and Pacific Coast Steamship Company, and it is 200 miles longer this way.' (Pointing on the map.) Q. Pointing on the map of the Sunset line? A. Yes, pointing out on the map the Sunset line.

'There is a comparison. Narrow their contention down to that physical disability and there you have a graphic comparison; a picture of the two lines. Now, where does the Canadian line stand under that? What is its answer? Oh, well, the Sunset line has been operating so successfully that it has demonstrated its ability to take the business, and it has got all it should have.' Do you want more? Q. Yes. A. (Reading:) 'That is a fine argument, isn't it? If the Sunset line can build steamships, improve transfer service, run trains 2,400 or 2,500 miles from New Orleans to San Francisco, and take a fair share of the business; so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian line, tell me why the Canadian line can not do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it.' * * *

Backers must put up the money.

"'All I should ask would be that my backers should put up the money, as they did in the case of the Sunset line.'" All witness stated with respect to facts, length of haul, etc., was a truthful statement. When he expressed his ability, with proper financial (2016) backing, if he was on the Canadian line, to do what he said he could do, he didn't state the whole case. "Q. You were giving an honest opinion as to your ability to do that, weren't you? A. I was giving an argument to impress the arbitrators. No, I didn't state the whole case—I might as well tell you so. Of course I didn't state the whole case. Q. But I say, in so far as you did state anything, what you said was so, wasn't it? A. I think so. * * * (2017) In the arbitration of the Canadian differential it was expressly stipulated that the case would be presented by traffic officers. No lawyers appeared in the matter at all. (2018) The arguments were made by Mr. Kerr, for the Canadian Pacific line, supported later on by Mr. Shaughnessy, and by witness for the American lines. The statements which witness read from the record of the arbitration are widely separated paragraphs from a very extensive argument made before the arbitrators.

Was making an argument.

The statements read from the record are widely separated paragraphs from a very extensive argument.

Naturally, the argument of the Canadian Pacific was to magnify the strength of the American lines and minimize its own strength. "In fact, to my mind, all there was to substantiate the claim of the Canadian Pacific was the fact that its line was a broken line—partly by rail and partly by water." On the other hand, in order to defeat the claim of the Canadian Pacific for the differential witness conceived it to be his province as an advocate of the American lines to minimize, at least as far as the facts warranted, the strength of the American lines as against the Canadian lines. He made every argument that he could with regard to the facts and presented in the strongest light that he felt he was justified in presenting, the facts from the side of the American lines as against the contention of the Canadian lines.

Witness as an advocate minimized the advantages of the Am. lines as against the Can. line.

"Q. In some of these paragraphs which you read at the request

of Mr. Severance, you were asked to state whether or not they were (2019) correct statements of facts. Have you attempted to separate in those paragraphs any statement of fact from any matter of argument. A. No. Q. You were presenting the arguments of the American side, and were not testifying as to the facts in that matter, were you, Mr. Stubbs? A. Yes; that is, I was not testifying—I was simply arguing the case of the American lines and presenting their case in its strongest possible light as I saw it. Q. Not mis-stating the facts, but putting upon the facts the interpretation favorable to your side of the case? A. Not consciously misstating the facts. * * * Q. Now, in the last statement to which your attention was called appeared the assertion by you that if you were in charge of the Canadian Pacific and had the proper backing, that you could do with respect to San Francisco business from the east certain things. I understand that to be an expression of opinion, on pages 196 and 197. * * * After reading that, you were asked by Mr. Severance to state whether the statements of fact in that paragraph were correct, and, as I recall, you said that they were. Did you mean that as one of the statements of fact or as an expression of opinion or of argument? A. Of course it can be no more and no less than the expression of an opinion."

Statements were argumentative.

Statement as to ability to do San Francisco business via Can. Pac. mere expression of opinion.

(2020) After the argument of witness was made and the Canadian Pacific denied a differential, it did practically no business to San Francisco. Neither the Great Northern nor the Northern Pacific nor any other line, mixed rail and water, via the Northern Pacific coast ports, including Portland, has done much, if any, business, to San Francisco. At the time of the argument that fact had not been developed. At the time of the argument, every traffic man present thought some business could be done by the use of the mixed rail and water lines, having in mind what had been done via the Gulf ports, but none of them (as witness did not) appreciated then as they all do now, the essential difference in the controlling conditions between the two classes of service. The routes via Puget Sound or Portland to San Francisco have been demonstrated to be insufficient and uninviting routes that would not take the business at equal rates as against other routes all-rail and the Sunset. The fact that the Northern lines have not solicited business indicates to witness that in their judgment the undertaking would cost more than it would come to. If they regarded that business as at all profitable, they would engage in it.

No San Francisco business carried by northern lines.

"The Canadian Pacific line, with the Soo connections, reaches St. Paul and that territory, and with their Canadian line reaches the eastern part of the Canadian Dominion, and connects at the border (or thereabouts) with New England lines that serve all New England and the Eastern States; and, of course, coming back to St. (2021) Paul, their connections there with the lines running south from St. Paul, get them into this territory." Their route to move business to San Francisco would be to take it over

Can. Pac. route to San Francisco.

their line through Canada to Vancouver; there deliver it to a boat line which would carry it to San Francisco, or they could connect at the border at that time with an independent line (witness has forgotten its name) which would give it a connection with the Northern Pacific. They did use that route and that connection for Seattle, Tacoma and Portland; but they did not, as far as witness can remember, attempt to use that route for San Francisco business in connection with the Southern Pacific line south of Portland. All the San Francisco business they ever took, as witness remembers, they sent through Vancouver and delivered it to or took it from Pacific coast steamship companies' vessels.

The Central Pac. U. P.'s only route to San Francisco.

The Union Pacific for San Francisco business has always used from the time it was opened and is now using, the Central Pacific line, running from Ogden to San Francisco. In the estimation of witness, the Union Pacific must use that line, because of its directness, because it serves intermediate territory as well as San Francisco; and because there is no other line open to it which would be at all effective or satisfactory in any degree, except at a differential rate, and witness thinks that no one of the lines leading across the continent would consent to any line using a differential rate against it.

(2022) "So far as the Union Pacific is concerned, its line, made in connection with the Central Pacific, was the original line across the continent, has always been the controlling line in so far as the control is represented by its taking the largest share of the business, and is the line of such paramount value to the Union Pacific that I do not think any company operating it would ever think of trying to make another line." If the Union Pacific attempted to use the line by way of Portland and San Francisco as against the Southern Pacific, at a cut rate, as the Canadian Pacific did, it would be cut off from a connection with the Central Pacific at Ogden. "Now, I do not mean to say by that that there would not have been through rates made in connection with that line, but I mean to say that in my judgment the result would have been about as bad as if there had been no rates made with them. In other words, they would have lost more than they would have gained. * * * They would have lost so much more that no sane manager would have ever attempted to divert business—San Francisco business—from the Ogden route to the route via Portland." (2023) Witness meant no sane manager of the Union Pacific, or any other line for that matter, under like conditions. "Q. The Canadian Pacific, then, could put in, as it did, these differential rates and through its only line, its only outlet, that is, through Puget Sound, and it did not have any other line that it was sacrificing by that procedure. Now, if the Union Pacific had attempted to put in differential rates by Portland, as the Canadian Pacific was doing by way of Puget Sound, as I understand you the Union Pacific would be sacrificing a very much more important line, namely, its line by way of Ogden. Is that correct? A. Yes; but, if I may be permitted—

Impracticability of Portland route.

"Q. State fully. A. A differential, as I interpret it, can not hold except by agreement. A differential over the Union Pacific line via Portland involves the consent of the Central Pacific, of the Rio Grande, of the Santa Fe, of the Burlington and of all these other lines. The fact that the Canadian Pacific was refused a differential is, it seems to me, evidence that the Union Pacific and no other line could ever have obtained the consent of the all-rail lines, or even the Gulf routes, to a differential for its line via Portland; and it follows, I think, at least it does in the minds of every traffic officer, every manager, that without a differential that route is practically a no thoroughfare as against the direct route. Now, added to that feature of the case is the fact that since 1883 the Central Pacific had a connection with the Rio Grande Western at Ogden, which made another all-rail route to the Missouri River and to Denver, and through the connections at Denver to all points in the United States; and I think it is obvious to the mind of every practical man, a man who knows anything about the business, that if the Union Pacific had undertaken to use its Portland route at a differential rate as against the Union Pacific-Central Pacific Ogden route that the Central Pacific would not have worked for it, that that Ogden gateway would have been closed to them, and all the influence not only of the Southern Pacific but of the connections of the Southern Pacific, the Rio Grande connections of the Southern Pacific, at Ogden, would have been thrown dead against it, with the result that it would have lost a great deal more than it would have gained. Now, of course I don't know what took place in the councils of the Union Pacific road in those times, but I venture to say they considered that in all its phases time and again and elected to hold to the Ogden route, and not to undertake to work the Portland route. Not because they had any regard for the Central Pacific, but because they had a regard for the material interests of the Union Pacific Railroad Company.

Reasons why Portland route is impracticable

"Q. Yes. I have been asking you really to demonstrate the obvious because (to be perfectly explicit) Mr. Severance, I take it, is trying to establish the inference from the fact that in your argument before (2024) this arbitration you included among the trans-continental lines, the line of the Union Pacific to Portland and boat line down, that the Union Pacific was in a position to compete on trans-continental business with the Southern Pacific by using, instead of its Central Pacific connection via Ogden, its line up to Portland and then its boat line down to San Francisco, and I wanted you to state whether that is a practical proposition, and if not, why not. If there is any other reason why it is not, in addition to those you have just stated, will you add them?

"A. To answer directly the last part of that question, whether in my judgment it was a practical proposition, I will simply say that to me it is obviously an impracticable route for the Union Pacific; obviously the Union Pacific would have been very foolish to have undertaken to use that route; obviously the Union Pacific official

Portland route never used by U. P.

knew that just as well as I did, and as a matter of fact they never did undertake to use it to any appreciable extent. I think possibly it will be found on the record that there may have been sporadic shipments that way, but for any organized endeavor on the part of the Union Pacific road to use that route I never have known of any such thing as long as I have been connected with the Southern Pacific. * * *

Cost of attempt would have been greater than gain.

"The Union Pacific could not have organized for the use of its line, we will call it, via Portland and the steamboats to San Francisco, without being practically cut off from the business it was enjoying with San Francisco, and not only with San Francisco, but with the business it was doing and had always done in all the interior territory in connection with the Central Pacific—it would have lost a great deal more than it could possibly have gained; and, as I have stated, that was evidently the view of the Union Pacific officials because they never attempted in any regular way, or open way, or systematic way, to do business that way.

Exact issue in Can. Pac. case.

"There is one statement that I should like to make with reference to the routes I enumerated in this argument as possible routes to California. The contention of the Canadian Pacific was for a differential on account of its line being a broken line. Its contention was for a differential against, not any one American line, but all the American lines, each and every American line; that it alone should have a differential under the rates used by any of the American lines for San Francisco business. Now, of course I seized upon that as manifestly inequitable and unjust, and I tried to make on paper, as it could have been made in fact if it had been attempted, as many routes to San Francisco similar to the broken route of the Canadian as was possible. I do not think it will be found in that argument or anything I have said that I regarded those American broken routes which I used by way of illustration (2025) and as opposed to the Canadian line, as effective routes or profitable routes. Q. But as compared with the Canadian Pacific? A. But as compared with the Canadian Pacific. I did not argue that the Canadian Pacific was not entitled to a differential against the all-rail short line. The whole argument and all the statements made were based upon the fact that there could be made any number of broken lines, meaning by that part water and by rail, that would be just as much entitled to a differential, as the Canadian Pacific, the result of which would have been chaos—there would have been no rates at all.

Traffic S. P. could have diverted.

"Q. Recurring again, for a moment, to that Ogden connection. Suppose that the Southern Pacific had been unable, for legal reasons or other reasons, absolutely to cancel its rates with the Union Pacific at Ogden and divert all of its traffic say to the Denver & Rio Grande, and had been required to keep in its rates, yet any traffic that it was able to control and route against the Union Pacific in a contest of that sort, would that have been a very large traffic? A. It would have been a very large percentage of all the

Pacific coast traffic. But I don't know why it is necessary to take my testimony on these points. The fact is that that route has been open—I mean the physical possibilities of such a route have always been there, just as the physical possibilities of a mixed rail and water route by the Northern Pacific through Tacoma or Seattle, and by the Great Northern in recent years through Seattle and of the Union Pacific and Short Line through Portland, and of the Santa Fe through Los Angeles before they got into San Francisco, or through San Diego before they got into San Francisco. None of them has ever been used effectively. While there have been sporadic shipments that way, they have not amounted to anything." (2026) The substance of witness' statement is that no sane management of the Union Pacific would attempt to use that Portland route in competition with the Southern Pacific for California business. It is supported by the fact that they have not attempted to use it. They may have attempted it and found out they could not do it. If so the attempt wasn't serious enough to attract his attention. Witness stated his opinion as to why the Sunset Route had been so successful in handling California business at rates upon which the Canadian Pacific has practically withdrawn, as follows:

Other transcontinental lines did not effectively use such route.

U. P. never made serious attempt to use Portland route.

"When I made this argument I did not understand the conditions as well as I understand them now and did very soon afterward, especially after I became more intimately associated with conditions up in the northwest which followed my taking service with the Union Pacific as well as with the Southern Pacific. I think the whole trend of this argument goes to show that all of us, every officer of a trans-continental line, from the outset, borrowed of their fears more than their judgment in dealing with the Canadian line. We did not understand—we did not know how inefficient such a line would be. We never ought to have allowed them to use the differential against us. If we had known as much as we did at the time this arbitration came up and the still more that we know now, the Canadian Pacific would never have had a differential there. We would not have permitted it. Now, there is a very different set of conditions as between the use of a steamship line on the Pacific in connection with the rail lines for this so-called trans-continental business and the use of a steamship line on the Atlantic. In the first place, there is practically but the one port, and that is San Francisco—practically speaking. San Diego doesn't amount to much as a tonnage producer. There is no other port which is a large producer of tonnage on the California coast but San Francisco. San Francisco's whole trade with the United States is inland, that is, is back towards the east, is in the territory that is served en route by the railroads that reach San Francisco. The Canadian Pacific line or any other line which attempted to use part rail and part water, the water line being on the Pacific coast, could only reach San Francisco, and

Reasons for success of Sunset route.

when it has got its freight there, except for that which was used in the city of San Francisco, all the rest would have (2027) to be distributed back into the interior and up the local roads—a very great handicap, a handicap not only in the rates around but also in the time used. * * *

"A. And the distribution would be through its rivals, and all its business would be revealed to its rivals. While on the part of the Sunset Route, it serves the port of New York, which in tonnage production of course is many times greater than that of the city of San Francisco. Its steamships had, in addition to the San Francisco trade, for their cargo all of New Orleans, Louisiana, Galveston, Texas, Oklahoma, part of Mississippi, some of Colorado, even some of Utah, all of western Texas, all of Arizona and New Mexico, and the whole state of California, from its southern boundary up to San Francisco, as contributors to its cargoes. At New York it could fill a vessel three times a week—never less than twice a week. It did not have to depend on San Francisco business alone for cargo for that vessel; it did not have to depend upon California business alone for that cargo; it did not have to depend upon the territorial business in addition to California business alone; but it had, as I have described, Louisiana, Texas, and the tonnage of other states. The Texas tonnage itself has always been equal to that of California, so far as the amount that is moved out of New York is concerned. For that reason the line was enabled to put high class boats on, and a number of boats, and sail always twice or three times a week, with full cargoes. Then at the opening of the Sunset Route, the rail line, after you pass Houston, it was very light in tonnage, there was very little delay in the movement of trains. When the vessel arrived at New Orleans, or at Algiers, rather, the cargo was taken out; that which was for the territories and California was loaded into cars solid, and that was usually a train load, never less than ten cars, and sometimes as high as forty, and those cars were put in a through train, and it moved as a through train, without the ordinary delays, and went into San Francisco or to Los Angeles solid, besides having the opportunity to distribute on its way up to San Francisco at all points in Southern California along the line of the road and in the San Joaquin valley. That made it possible to have a steamship service on the Atlantic and a rail service that could not be duplicated by the use of an all-rail line to Seattle or to Tacoma or to Portland or to Vancouver, with a steamship line running from those ports to San Francisco. In the first place, they would have nothing but San Francisco business that they could possibly compete for at any reasonable rate and they would gather their business up in such a way, and the arrivals at the port of departure would be so broken that it would be almost impossible for them to have full cargoes. A steamer would sail with a half cargo and less than half cargo, and the delays incident to the rail transit would be, as it would

Reasons for success of Sunset route.

have to move in its regular trains, such that—well, it would make it an impossible route as compared with the Sunset Route. * * *

(2028) "The Canadian Pacific would have to take cargoes from New York and its connections, from Boston and its connections, and then all along the Canadian pick up cargoes at the various junctions with their lines to St. Paul, and they would not make a solid train at any one point. The result would be that the tonnage necessary to fill their ship would arrive at destination in such broken lots that the steamers would run on half cargo and quarter cargo." Witness thought it obvious that the unity of management of the Sunset line, under a single control, is an important element in the advantages of that line from New York to San Francisco. Why Northern lines are not successful.

"We may theorize just as we please on that. I would have to confess it has been a surprise to me that there has been so little accomplished in the way of using the steamship lines via Vancouver and via Seattle and via Portland. We learned by experience originally. When we opened the Sunset line I thought we would have to have a differential rate, a lower rate. We started in with a differential rate. But the rail lines would not have it, and we had to stop it, within five months after we put it in. Since that time we have made rates equal with the rates of the all-rail line." Witness thought that the Northern Pacific once attempted to work California business by boat from Puget Sound down, and gave it up, that all the lines have tried it. He hasn't any clear recollection of particular shipments or particular dates. He has not heard of any such attempt for a number of years. Sunset differential rate abandoned.

Referring to the paragraph near the bottom of page 119 of the record of arbitration, which witness read at the instance of Mr. Severance [reading:] "There is much valuable business in Montana, Colorado and Utah, competed for by these direct Central Pacific, Union Pacific, Denver & Rio Grande lines and by the Oregon Railroad & Navigation Company and Oregon Short Line, and for Montana by the Great Northern and Northern Pacific, as well as the Oregon Railroad & Navigation Company and Oregon Short Line, but we all work on a deal level equality of rates." That statement is rather indefinite. The competition that he referred to is rather the competition of markets. For example, take the Utah trade: San Francisco was competing for Utah trade as against Chicago and Omaha. "MR. SEVERANCE. Mr. Stubbs, you read the sentence just before that and you will see you are on the wrong tangent. That shows what you were talking about—the sentence just before that, where you (2029) state 'They are not used for San Francisco traffic with Montana, Utah and Colorado, as between the all-rail lines and the mixed water-and-rail lines.' Excuse me from breaking in on the cross-examination, but I know you want to be accurate. MR. LOVETT. That is all right: except that I do not attach the significance to that that you do. However, what has Mr. Stubbs to say about that? Competitive business in Montana, Colorado and Utah.

"WITNESS. That is all right in that connection. What I had in

mind in writing that statement was this: That in Utah and in Montana and in Idaho there was business which was competed for by these lines. Now, let me illustrate: Utah business was competed for by San Francisco and by Portland merchants and by the East. * * * It might be inferred that the business from San Francisco to Ogden could be taken out via Portland over the Navigation Company's boat to Portland and then down over the Oregon Short Line. But if they ever did anything of that kind, any such business as that, they did it upon the deal level of equality of rates. That is all that that amounts to. That is why the statement was made. And so with respect to Montana business. If the boats took freight from San Francisco to Portland, or to Seattle, and then out to Spokane, as against the all-rail line, it was done, so far as I know, on a dead level of equality of rates. Now, that is what that paragraph was meant to convey."

Business between San Francisco and Portland.

There was considerable traffic between San Francisco and Portland proper—all kinds, general merchandise. "The Southern Pacific rail line between San Francisco and Portland never competed in the sense of meeting the rates of the steamship line; it never made rates that were equal, according to my recollection, to the rates offered by the steamship line with insurance added; but always did have rates in. I do not recall that there was any fixed relation between the rates. There may have been, but if so, I have forgotten it. And, with the exception of perishable freights and high explosives, I think that upon the average the rail line got very little business from San Francisco to Portland, as against the steamship line. But the (2030) rates primarily from San Francisco to Portland made by the rail line were made as basing rates, in order to secure the business south of Portland on its own line, in the interior of Oregon; and they did work for that business and carried the bulk of it, I think." * * *

"What I said was this: that the Southern Pacific did, in a certain sense, compete against the steamship lines for the business from San Francisco to Portland; that is, it made rates; but there was such a difference in the rail rates and the steamship rates, the rail rates being so much higher, that, upon the whole, with the exception of perishable goods and probably high explosives, ordinarily the business from San Francisco proper to Portland proper, moved by boat; that the rates which the Southern Pacific Company made from San Francisco to Portland were made, in the main, as basing rates for the territory south. That is to say, what I meant to convey was that the Southern Pacific's rates to a point on its own line south of Portland would not exceed the Southern Pacific rates to Portland plus the local back. Sometimes it was less than that. And the main object of the Southern Pacific—because it recognized its inability to compete with the steamship line—in making rates from San Francisco to Portland was to make them as basing rates for the intermediate territory. That is as I understand it. And, of course to points east on the O. R. & N."

(2032) Any traffic which the Southern Pacific engaged in between San Francisco and points in Washington was in connection with the O. R. & N., or the Northern Pacific, as it had no lines north of Portland. The eastern boundary of the Transcontinental Association is through Kuna on the Oregon Short Line. That is to say, that is the eastern boundary of the territory to which the transcontinental rates apply. It is a rather crooked line. In making the statement, "This line forms the eastern boundary of the Transcontinental Association," before the arbitrators, witness meant by that the boundary east of (2033) which the initial transcontinental rates apply. West of that boundary, which is practically the Missouri River, we added a local back, in order to make the through rate. "Q. The traffic involved in that arbitration was that between San Francisco and points east of a line referred to in your argument before the arbitrators. Now, what was that line? A. It was practically, as I say there, the Missouri River line—the Missouri River common point line. That would be Kansas City, St. Joe, Council Bluffs, Omaha and St Paul." It takes in Houston and Galveston on the south. New Orleans is treated as a Mississipi River point.

Business between San Francisco and Washington.

Traffic involved in Can. Pac. arbitration.

(2034) Witness doubts very much whether the Southern Pacific solicitors paid any attention to the merchandise business moving from San Francisco to Portland. They were out of it for that. It is the recollection of witness that the Navigation Company paid no attention whatsoever to the rail rates in making its rates from San Francisco to Portland. They had more or less competition by other vessels, and that competition was controlling in its influence on their rates. The Southern Pacific hauled very little, if any, general merchandise from San Francisco to Portland, except the items heretofore mentioned by him. (2035) Thinks the Southern Pacific have hauled some, but very little, lumber from Portland to San Francisco, and at some times hauled special shipments of grain. Thinks likely that they hauled some flour, but whether that originated at Portland could not tell. It is more than likely that flour originated at a mill south of Portland. The divisions of the through rate between the Central Pacific and the Union Pacific from Omaha to San Francisco have always been the same,—54 per cent. to the Union Pacific and 46 to the Southern Pacific. Witness thinks the division was unfair to the Southern Pacific, because the cost of service west of Ogden was such that its division should have been more. The division was practically on the basis of the original mileage.

S. P. paid no attention to merchandise business from San Francisco to Portland.

Freight hauled by S. P. from Portland to San Francisco.

Divisions between U. P. and S. P.

(2036) "Q. * * * The situation is about this, is it not: the Southern Pacific, either by reason of self-preservation to maintain its rates and maintain its business, or because of the generosity of its traffic department, as represented by yourself, was always willing to maintain with the Union Pacific a fair division of through rates. That being the case, there was never any occasion for the

Union Pacific, as a retaliatory measure, to attempt to use that Portland line, which is a round-about line; isn't that about so? A. I am not aware of any provocation by the Southern Pacific to the Union Pacific to use any other line than the Central Pacific line."

American-Hawaiian line.

(2037) Witness thinks the American-Hawaiian line is probably carrying 200,000 tons per annum. It originally went around the Horn. They have carried more tonnage since the Tehuantepec road was constructed. They have more steamers. The line is much longer than the all-rail line. It is much longer than the Morgan line. The Tehuantepec road crosses the lower end of Mexico.

Where in the argument of the Canadian differential witness stated facts as facts he understood them to be facts; and where he gave his opinion, he gave the opinion that he thought would answer his case. "Q. And you would not want to say now whether the opinions that you gave there were honest opinions, or not? A. Well, that depends upon the definition of the term 'honest.' I think my statements there were made in the same spirit and with (2038) the same degree of accuracy as any statements that a lawyer would make in pleading a case at the bar—whether it was Judge Lovett, or Loomis, or anybody else."

Statements in Can. Pac. case made as a lawyer would make them.

So far as he undertook to state a fact there, as to tariffs, movement of traffic, the location of lines of railway, or railway and steamship, or any other fact in there, it was accurately stated, as he knew about it from his sources of information. And when it came to a matter of argument or deduction from those facts, he put it as well as he could for his side. As to what he could do under certain circumstances, he might have exaggerated a little there, using the poetic license.

Statements of fact, correct.

Witness did not withdraw the statement appearing on page 197 of the record of arbitration, reading as follows: "If the Sunset line can build steamships, (2039) improve transfer service, run trains 2400 or 2500 miles from New Orleans to San Francisco, and take a fair share of the business, so much of the business that the Canadian line and no other line would be willing to give it any more, and it has double the ocean haul; and in total length of haul it is 200 miles longer than the Canadian, tell me why the Canadian line cannot do it? Mr. Chairman, I know that you could do it, and while I am not an operating man, if I were on the Canadian line, I could do it. All I should ask would be that my backers should put up the money, as they did in the case of the Sunset line." But he wanted the backers to put up the money, "and I do not guarantee that it would be a profitable investment. There is the nub of the whole thing. That is, an investment that any reasonable man would make. They are better off without the business than attempting to get it under such conditions."

Can. Pac. line to San Francisco would not pay investors.

Witness thinks that perhaps the productiveness per mile of road, Omaha to Ogden, is greater than the productiveness per mile of road Ogden to San Francisco, but thinks the difference would be small if figured out. After the Sunset line was started it operated

for about four months, under a differential. (2040) Since that time there have been occasional lower rates by that route than the all-rail route—"Not an agreed differential, but a condition of competition by the sea routes that the all-rail lines did not care to encounter, and they turned it over to the Sunset Route to take care of: and I think that there is today and has been for some time, what they call New York pier rates to certain points, which are lower than the all rail rates from New York," that is on certain special commodities. The class rates are just the same; and on a majority of the commodities they are the same too.

Sunset differential lasted about four months.

(2041) The book referred to by witness is here offered in evidence as Exhibit 150. The Southern Pacific has always allowed the Denver and Rio Grande and its connections east the same divisions that it has allowed the Union Pacific. The Denver and Rio Grande has no boat line to Portland, or outlet that way. Witness thinks the Southern Pacific's proportion is the same west of Ogden from Kansas City as it is from Omaha. (2043-2226) Complainant's Exhibit 150, being a record of proceedings at hearing before Board of Arbitration on question of Canadian Pacific differentials at Auditorium Hotel, Chicago, October 12, 1898.

D. & R. G. has same divisions as U. P.

ST. LOUIS, MARCH 22, 1909.

(2227) M. C. MARKHAM.

Markham.

Lives in St. Louis. For over three years assistant to the Vice-President of the Missouri Pacific Railroad at St. Louis. Started in the railroad service in 1869, and since then has been train dispatcher, superintendent of telegraph, clerk in the general freight and passenger office, secretary to the traffic manager of the Illinois Central for about six years, assistant to the general manager of the I. C. two years, assistant to the traffic manager of the I. C. fifteen years; joint representative of the Rock Island-Atchison, the Gould lines, the M. K. & T. in New York for six months; assistant to president of the Western Pacific. Witness' experience chiefly in traffic. Left the service of the I. C. in 1903, after 21 years' service.

St. Louis. Mo. Pac. traffic official.

(2228) Before the I. C. line was built into Omaha, it was not engaged in transcontinental business to any appreciable extent. The Omaha line was built, witness thought, in 1897 or 1898, along there. Previous to that, whatever transcontinental business he had moved via New Orleans and Sioux City. From Sioux City traffic went over the Omaha line to the U. P. Picked up business on the I. C. lines from such points on connecting lines as solicitors could get it, all the way east on the Chicago parallel of latitude, probably. Before the consolidation, thought the S. P. and U. P. were competitors on all traffic east of the Missouri River, and probably north of the Ohio. That was the territory in which the competition would be marked. On the Pacific coast there were competitors all the way from Portland to San Diego, witness thought.

Route of Ill. Cent. transcontinental traffic.

Routing of S. P.'s transcontinental traffic.

(2229) Witness thought the S. P. routed traffic both ways. It might secure it in connection with some other lines. From the Atlantic seaboard they sent a great deal of traffic by the southern route, and witness supposed also by the other. He found traffic going both ways. From seaboard territory, Pittsburg, Cincinnati, and points there, I. C. worked business by New Orleans, and found the S. P. very willing to aid them. (2230) Witness stated that the U. P.'s possession of a line by Portland would have an influence on the transcontinental rates. If the U. P. made a rate by Portland to San Francisco, the other lines might meet that rate, or might not. If the U. P.'s rate was of a character that enabled it to take an important amount of traffic, the S. P. would probably retaliate and reduce its rates.

Influence of U. P.'s Portland route.

(2231) Distance from Ogden to San Francisco about 800 miles. Thinks it is all essential for competitive lines to maintain solicitors. Witness thought from Ogden to Portland by the O. R. & N. was about 750 miles, and about 770 to 800 miles from Portland to San Francisco by water. (2232) The natural line for California traffic handled by the U. P. was the Central Pacific, because it is a long established route, the shortest route, and it is today recognized that it has better facilities than probably any other line. Witness doesn't know about the Atchison, but he thinks the former is so regarded. The direct all-rail line much more efficient than the transfer by boat down from Portland. Never knew of any freight to be worked by the U. P. via Portland. Never knew of any shipments going to San Francisco from east of the Missouri River by Portland. Never knew the U. P. to solicit freight that way, and the I. C. never routed any that way. Didn't have any divisions in that way.

U. P.'s natural connection is the Cent. Pac.

Never knew U. P. to work the route via Portland.

Why it would be foolish for U. P. to work Portland route.

(2233) If the U. P. cut the rate, or otherwise antagonized the S. P. by working the Portland route, the latter could turn its eastbound business over to the D. & R. G. The S. P. is able to control a very large amount of both east and west-bound business, and always has been. They have very active agents in the field in the east, "and, of course, it controls it in the west, entirely so." Witness understood the D. & R. G. thought a good deal of traffic went to the U. P., which it might have gotten, but for the friendship of the S. P. for the U. P. Thinks as a railroad proposition it would be a foolish thing for the U. P. to work the Portland route. Not simply because of the power of the S. P. to retaliate by diversion of traffic, but because the U. P. couldn't hope to do better by any other route than the S. P. Witness refers to the net revenue, which, of course, was what everybody was after. Witness understood the S. P. worked both the Sunset and Ogden routes to California.

S. P. worked for longest haul.

(2234) It worked preferably the way it could get the long haul, ordinarily, provided there was more revenue in the long haul—which generally follows. From Chicago territory they worked for the Ogden route more than the Sunset route. The S. P. was the U. P.'s only outlet to California before the San Pedro was built.

There were only two corporations in California operating railroads eastwardly, the Atchison and the S. P. (2235) Various trans-continental lines described and discussed. (2236) Witness thought Missouri Pacific had a joint agent with the D. & R. G. on the coast. The Texas & Pacific and the Missouri Pacific has had a general Pacific coast agent for at least twenty years, with a corps of assistants actively working for California business. The T. & P. have one man at Los Angeles. Witness doesn't think they have one at San Francisco. Of course, the Missouri Pacific representatives solicit the T. & P. The Missouri Pacific moves traffic either by El Paso or Ogden. Witness thought the T. & P. was in operation before the M. P. reached Pueblo.

Soliciting agencies.

El Paso and Ogden, M. P.'s gateways.

(2237) M. P., after the close relations that now exist with the D. & R. G., route California business by Ogden. Where the I. C. has control of the business, sometimes it would send it by Omaha and sometimes by way of New Orleans, depending upon which way it got the most revenue. (2238) The S. P. and U. P. agents co-operate with the I. C. on the different routes. The I. C. had an agent in California, and there the conditions were reversed, the latter co-operating with the S. P. and U. P. representative. (2239) In a war of rates, brought on by the U. P.'s use of the Portland route, the Sunset route would necessarily be drawn in. Witness would consider it foolish for the S. P. to attempt to exact unfair divisions from the U. P., or to divert business from them.

New Orleans and Omaha I. C.'s gateways.

(2240) Witness doesn't understand that the D. & R. G. cannot compete on equal terms with the U. P. for business moving out of California through Ogden. The U. P. is the S. P.'s preferred connection on such business as the S. P. controls. (2241) Witness can understand that the S. P. does not give the D. & R. G. as much business as it formerly did, but thinks it would still reciprocate with that line for business which it gave to the S. P.; in other words, a quid pro quo. Before the consolidation, understood Mr. Stubbs favored the U. P., because they had more traffic to deliver. (2242) The U. P. coming to the very portal of the traffic to the Missouri River, Mr. Stubbs would naturally think it was the best line to build up. The U. P. has always been influential in controlling the transcontinental situation in the west, because of the importance of the line and the personality of its officers. Traffic moved east over the S. P. from the Pacific coast by way of New Orleans, and thence over the I. C. It consisted largely of fruit. Thinks some of it went as far as Chicago, and a good deal of it would go to eastern points via Cincinnati, Louisville, and those gateways. The Missouri Pacific is an independent line, worked wholly in its own interest by its officers. Witness considers the U. P. route to San Francisco via Ogden as of value in that it would enable the U. P. to always get fair and reasonable terms from S. P. from Ogden west. When witness was with the I. C., there was competition between the New Orleans route and the Ogden route on passenger business. (2243) The tourist traffic by way of New Or-

D. & R. G. competes on equal terms with U. P.

U. P. had more traffic to deliver.

Value of Portland route.

leans is a large business. The S. P. and U. P., as witness now recollects, after the consolidation divided transcontinental traffic between the Southern and Ogden route by a line drawn northeast from Cairo to some point on Lake Erie. All south of that line would go by New Orleans and all north of that line by the Ogden route. The I. C. might participate in Sunset traffic that was delivered to the S. P. at some point other than New Orleans. It might take business to Cairo, and turn it over to the Iron Mountain, thence it would go to St. Louis and El Paso.

Passenger business via Ogden and New Orleans.

(2244) In testifying about the dividing line, witness meant the joint agent preferred to take the freight in accordance with those geographical limits. He was willing, however, to take it either way, and that didn't interfere with witness' solicitation, and the Harriman lines didn't work against him in his solicitation of freight by way of New Orleans. (2245) No matter what the Tehuantepec or other lines may have to do in carrying freight a long distance, witness said "Foolish" is a very mild term for the havoc that would ensue if the U. P. attempted to work the indirect and handicapped Portland line as against the direct line. The U. P. doesn't extend east of the Missouri River, and the trunk lines east of Chicago can work either with the U. P. or the Atchison or the S. P. by El Paso, or with the D. & R. G.

No interference with witness' solicitation.

Foolish to work Portland route.

(2246) And all those lines could refuse to join the U. P. in cutting rates, and could divert their business to the D. & R. G. and S. P. Of course, the U. P. could command a certain business of its own. It could solicit business in Chicago or the central states, or beyond, which according to the present practice would be delivered to it by the other lines at Omaha. The U. P. could not cut the through rate legally, without the concurrence of its connections. It could only make a local rate from Omaha, and the through rate would be made up of the sum of the locals on that point. The other lines would have a right to cancel their divisions with it, and would deliver traffic to the U. P. at Omaha on their local rate. It would be suicidal for the U. P. to attempt it. No sane railroad man would attempt such a thing, unless the provocation was very great. Of course, if the S. P. didn't deal fairly at Ogden, there would be no other alternative left, but witness could not conceive of the S. P. not dealing fairly with the U. P. and thus losing its direct connection. It is to the interest of both of them to work together, and they have never done anything else.

Suicidal to use Portland route.

(2247) If the U. P. were to attempt to cut the rate against the S. P. all of its connections on transcontinental business are in a position to ignore it on that business, except such as the U. P. might get by cutting the local rate from Omaha. Witness thought the disastrous consequences to the U. P. would also reach the S. P., because the transcontinental rates in such case could not be held up. The S. P. could not afford to ignore the amount of business that the U. P. would take from Omaha and points

Effect of rate war.

east on the cut rate. The rates from the Missouri River are so very high, they could be cut a great deal, and still leave a margin. (2248) The U. P. would, however, have to pay the locals up to Omaha, and the locals to the Missouri River from the east are a good deal higher than the eastern proportion of the through rate. Witness didn't know what the difference would amount to. By the time the U. P. had paid the local, there wouldn't be much left to pay it for getting that business up to Portland and down by boat to San Francisco, and they would be at a great disadvantage in the matter of time and handling. Witness never knew of one line's cutting transcontinental rates, that the others didn't participate in it. A cut on one line would bring down all. Never knew of a war, however, being inaugurated, except between terminal lines. Such wars as have existed in transcontinental rates originated either between the S. P. and the Atchison, or the S. P. and some of the water carriers. Witness thought the only one he knew of was on the advent of the Atchison in 1882 or 1883. It might have been as late as 1886. Never knew of a rate war between connecting lines that couldn't agree upon a division.

(2249) CHARLES VON BEHREN.

Von Behren.

For thirty years manufacturer of vehicle wood stock, at Evansville, Ind. His town is reached by the L. & N., I. C., E. & T. H., and the Southern. (2250) Before the consolidation, the S. P. solicited witness' business via New Orleans. Witness routed his business that way principally over the I. C. The U. P. then solicited by way of Omaha, witness thought. Since the consolidation, the joint agent has not called as frequently as before. Most of witness' business is routed by the consignee. Prior to the consolidation, the S. P. agent never attempted to route other than by New Orleans. (2251) But the S. P. agent never attempted to dissuade witness from shipping via Ogden. Witness didn't know whether traffic passed over the S. P. in those days west of Ogden, or not. Witness' traffic has been solicited by the Atchison. Doesn't know when was the last time he saw that agent. Wouldn't say they had discontinued solicitation. Doesn't know whether the Rock Island solicits coast business or not. Thinks that the Missouri Pacific does not, nor does the M. K. & T.

Evansville, Ind. Manufacturer.

S. P. agent did not oppose Ogden route.

(2252) Doesn't think the Rock Island, the D. & R. G., the St. Paul, or the Northwestern solicit his coast business. Most of witness' north coast business is taken by the G. N., but the G. N. takes no California business. Never shipped anything to San Francisco via Portland and boat. Thought he shipped about fifty carloads a year to the coast, moving principally by the U. P. and S. P. Some of it by the Atchison. The S. P. shipments referred to go via New Orleans. Not interested in the divisions. (2253) The S. P. solicitors never mentioned Ogden to witness. He knew nothing about Ogden, never having been there.

Never used Portland route.

Morrill.

(2253) C. H. MORRILL.

Former freight solicitor of S. P. at St. Louis.

Except for four years, when he was in the mercantile business, since 1876 in the traffic department of the M. K. & T., the Missouri Pacific, the Cotton Belt, H. & T. C. and S. P., respectively. Entered the employ of the H. & T. C. in 1887. That road then ran from Denison to Houston, trackage arrangement into Galveston; Hempsted to Austin, and the short line up to north of Waco, a little west, and then the Fort Worth Branch. (2254) It was taken over by the S. P. in 1891 or 1892, witness thought, and he remained with the joint properties up to the end of 1893. Then became commercial agent of the S. P. at St. Louis. Solicited traffic with the assistance of a contracting agent, stenographer and one clerk. Aglar was then the general agent of the U. P. at St. Louis. The S. P. then participated in the general class of business that went to the coast which included woodenware, implements, beer, glass, or practically all the traffic that moved. Witness covered the St. Louis territory, which included practically the Mississippi River points between Quincy, he thought, and Cairo, Missouri, and some of the Missouri River points, and also part of Arkansas.

Solicited via longest haul.

Transcontinental routes from St. Louis.

(2255) What route witness solicited by depended partly on what tracks the industry was located. He would be foolish to undertake to move freight by New Orleans if it were located on a Missouri River line. Business that was not controlled by conditions of that sort, witness naturally tried to route by the longest haul. There were two or three routes through El Paso, the Iron Mountain in connection with the T. & P., also the M. K. & T., which witness thought then had a connection via La Grange or Columbus, Texas, or could haul it to Fort Worth. There were also lines through the Missouri River, either at Kansas City or Omaha. At the latter, it would be in connection with the U. P. At the former, in connection with the several lines leading from there. The only place from which witness tried to get business by New Orleans was St. Louis, over the I. C. The traffic struck the S. P. at La Grange and Columbus. The former was probably 700 or 800 miles from El Paso, and the latter just a few miles.

Frequently solicited via Ogden. Stood in with the local man.

(2256) Columbus is 100 miles west of Houston. Witness doesn't know how the U. P. was endeavoring to route traffic. He worked with Aglar at one time, and the latter was glad to get business at Kansas City and at Ogden. On occasions, lots of times, witness has solicited business via Ogden. It depended on local conditions. He tried to stand in with the local man, and get as much of the loaf as possible. Worked the other way preferably, because of the longer haul. When employed by the M. K. & T. witness only had to do with the local business, not with the coast business, until he became commercial agent. Business over the M. K. & T. moved for a while via La Grange, and at one

time there were divisions via the Fort Worth and the T. & P. Thinks that was the junction. That would be El Paso. Then worked with the S. P., and received lots of information from them about shipments to move. Also, when working for the S. P., received notice from San Francisco of shipments moving west by Ogden.

(2257) At times, but not always, the witness would go after the shipper, and undertake to get a longer haul. It would depend largely on who the shipper was, and how he was located. If witness thought it to his interest, he would let the shipper alone. He always had the Atchison to look out for. Doesn't recollect getting any instructions from San Francisco to try to route by New Orleans, in connection with notification that shipments had been routed by Ogden. Never received instructions from San Francisco in future to get business by New Orleans. Never got any instructions from his territory that there was any embargo on the Ogden route. If Government counsel understood witness that way, either witness had not made himself clear, or didn't understand the question. What he meant to say was as follows: "That at the time I was here, the Mojave route, as they call it, was very active, and that route would undertake to get in future shipments via longer haul. That was the extent of any notifications that I have any recollection of coming from either the San Francisco offices or any of the commercial offices on the coast." (2258) Where business was through, witness routed it by New Orleans or Texas junctions, which ever way he could get the most revenue, always keeping in view the local conditions. Not very often found himself in competition with the U. P. for coast business, although that did happen. They had an active agency at St. Louis, and witness also tried to be active.

No embargo on Ogden route.

(2259) Witness' principal work was with the local line. It was to his interest as a solicitor to work with the line on which traffic originated, and to try to get it to work with him. Carload business that he handled was not only that which originated on the tracks of the I. C., but also that of the Terminal Company at St. Louis. The Terminal Company would handle it across the River, and deliver it to the I. C. As far as witness knew, the Terminal Company was impartial as between the various roads, and carried it whichever way they desired. Doesn't recollect ever attempting to divert business going by way of Ogden to some other route. If the U. P. controlled business that way, the S. P. would get a share of it.

Principal work was with local line originating traffic.

Never attempted to divert traffic from Ogden route, as S. P. got part of it.

(2260) Never tried to get that business away from the U. P. All the lines leading westerly and southwesterly from St. Louis were soliciting California business. Doesn't know that the Frisco was, but the Missouri River lines were, and the Texas lines were. Doesn't know whether the Frisco had any route to El Paso at that time, or not, but all the lines then in existence solicited. Witness was employed by the M. K. & T. up to 1902. It attempted

St. Louis lines that solicited Calif. traffic.

to work business by way of Texas. They tried to get the long haul, and could deliver it to the T. & P. at Fort Worth. (2261) If the T. & P. controlled a car from Fort Worth westerly, the M. K. & T. would try to work with it to get that car, but didn't get lots of encouragement, because the T. & P. were working with the Gould lines, the Iron Mountain. There are a lot of industries located on the line of the Terminal Company,—pretty nearly everything shipped out of Cupples station is a terminal proposition. That is a pretty big place in itself. Witness solicited the men who had industries on the terminal lines, sometimes through the Terminal Company, and sometimes personally. Witness was free to go in and solicit the business that was on the lines of the Terminal Company.

(2262) Unrouted business which witness was able to secure he worked by New Orleans. The Terminal Company is a terminal connecting company, a switching company, operating between St. Louis and East St. Louis. Its switching charges, witness thought, were paid by the local lines, but not by the S. P. Witness thought the U. P. agent was also soliciting business via Ogden off that terminal line. They were not sending any business by New Orleans. Didn't try to take shipments away from the U. P.'s Ogden line, but did attempt to divert shipments from the Atchison even after the latter had secured control of them. Witness thought he had already testified as to this. "That was the Mojave route."

Tried to divert traffic from the Atchison but not from U. P.

(2263) The Mojave route of the Atchison at that time gave the S. P. a haul from Southern California up into San Francisco. Witness didn't know what the arrangement was, though. That line was competitive both with the Sunset and the U. P. In reference to witness' direct testimony that he worked with the U. P. or the D. & R. G. after they had secured business, witness admitted that it didn't take any work, on his part in relation to the shipment after those companies had secured control of the business, because such business had to go over the S. P. from Ogden. "We didn't bother with those shipments."

(2264) When witness heard of a shipment that he understood was going to move, or was likely to move by the U. P., he never attempted to divert it to the Sunset. In that case, he would cooperate with the U. P. to get it by Ogden, if there was any work necessary on his part, whereas, if he heard of a shipment which was likely to move by the Atchison, he went to work to divert it. He regarded the Atchison as the S. P.'s real competitor for California business from St. Louis territory, but didn't regard the U. P. as a competitor to the same extent as he did the Atchison. Regarded the U. P. only as offering him the shorter route than by the southern gateway. The Terminal Company witness has testified about, that is, the St. Louis Terminal Company, serves practically all the roads entering that city. It serves all the lines entering St. Louis, the same way that it serves the I. C., and the representatives of all those lines could go to the industries

Regarded Atchison as real competitor and U. P. only as offering shorter route.

on its tracks, and solicit business. (2265) And they constantly did so solicit. If witness could control unrouted shipment on the terminal lines, he would send it by New Orleans, and to that extent he was competing with both the Atchison and U. P. He was, however, very careful to avoid antagonisms of any of the lines that were working with him. Was not afraid, however, to antagonize an Atchison shipment.

Sent unrouted freight via New Orleans.

(2266) So far as the S. P. was concerned, it was merely a question of revenue. Has solicited by the Ogden route in connection with the U. P. lots of times. (2267) So far as the S. P. was concerned, it was a question of a division of revenue. Didn't know of any business moving from the St. Louis territory by the Panama route. (2268) Where he found business he could control, he didn't tell the U. P. about it, but where he found the business was not going to move by way of New Orleans, but was liable to move by the Atchison, he has informed the U. P. of it, and tried to get the shipment by way of Ogden. Has told the other lines, too, any line that he thought would give him the strongest help.

Worked with U. P. as against Atchison.

(2268) JAMES C. LINCOLN.

Lincoln.

Resides in St. Louis. Is Commissioner of the Merchants' Exchange Traffic Bureau. Occupied that position since May 1st, 1905. Entered the railway service in the Car Service Department of the St. Joseph and Denver City Railroad in 1876. Continued in the employ of that company through its various departments, transportation and traffic, for twelve years, and then in 1888, entered the employ of the Missouri Pacific as commercial agent at Atchison, Kansas, where he remained until the end of 1889. Then came to St. Louis in the employ of the same company, where he continued until he accepted his present position.

Com'r St. Louis Traffic Bureau.

Former traffic officer of Mo. Pac.

(2269) Witness names the various positions which he held with the Missouri Pacific at St. Louis, all in traffic department. The Missouri Pacific maintained commercial agencies on the Pacific coast at San Francisco, Portland and Los Angeles. It had a line leading from St. Louis to Pueblo—the Iron Mountain from St. Louis to Texarkana, there connecting with the T. & P. to El Paso. Connected at Pueblo with the D. & R. G. and Rio Grande Western. Had commercial agents in the principal cities in the east, such as Pittsburg, New York, Boston and Philadelphia. Business via Pueblo reached San Francisco over the Central Pacific, and Portland by the O. S. L. and also the Shasta route.

Mo. Pac. agencies and transcontinental routes.

(2270) The bulk of his Southern California business moved to Los Angeles by way of El Paso. Strongest competitor for business which the Missouri Pacific sought through its New York agent was the Morgan Line. After the consolidation, the Shasta route was not open for Portland business. Tried to route Pittsburg-San Francisco business by way of St. Louis, then M. P. to Pueblo and D. & R. G. to Ogden; S. P. beyond. Southern Cali-

Mo. Pac.'s competitors.

fornia business via Iron Mountain and the T. & P. to El Paso. North coast by way of Pueblo and Ogden gateway. Didn't meet the Morgan Line competition at Pittsburg to the same extent as on the seaboard. Pittsburg proper would move all rail, but east of Pittsburg there was the water route competition. Met, however, with the competition of the Sunset route all-rail to New Orleans on and east of the Mississippi River, south of and including St. Louis.

Effect of combination on Mo. Pac. business.

(2271) The combination of the Harriman lines diminished the business of the M. P. through the Ogden gateway, by Pueblo. If business was secured by the S. P. it very naturally went to the U. P. Business from California to the east via New Orleans, moved to all the territory east of the Mississippi River, north (south) of St. Louis, and business moved to Chicago that way. "Q. So that movement was both ways? A. Both ways."

(2272) After the amalgamation, business from St. Louis and this more northern territory, witness observed, was sent by the joint agents through Omaha and Ogden and from south of the Ohio River through New Orleans. From this middle territory they used the New Orleans route to southern California. That was up to the time witness left the M. P. in 1905. After the amalgamation, they solicited business for the longest haul, treating both lines together, as their own rails. The M. P. and T. & P. have been operated that way with respect to California business as one line. They always try for the long haul over both lines. The M. P. has an outlet for California by way of Texarkana to a connection with the T. & P., and another by way of Pueblo and Ogden, and would naturally work California business by the gateway that affords most revenue, (2273) just as the U. P. and S. P. have since the amalgamation. Where routes are reasonable, all railroads undertake to get the business for the longest possible haul. The solicitation of the S. P. south of the Ohio River and east of the Mississippi was very active before the amalgamation. Witness has also found from the reports made by his agencies, that the S. P. was then soliciting business somewhat actively for lower California in Illinois territory, where it was served by the I. C., but not where it was served by other lines, working with the I. C., but outside of the I. C. territory they were operating largely through Ogden, with the U. P., the M. P., and any other line that would take it to Ogden. (2274) He didn't know of the S. P. soliciting San Francisco business from Chicago territory.

Business solicited for longest haul.

All railroads do this.

Solicitation of S. P. via Ogden.

S. P. dominated Calif. business. Was U. P.'s only outlet.

(2275) S. P. was a large controller of the California transcontinental business. It practically dominated that situation. It was the U. P.'s only outlet before the construction of the San Pedro line. After the consolidation, the S. P. became the preferred connection of the U. P., and all the business it could control it gave to the U. P. rather than to the D. & R. G. and the M. P. (2276) For Southern California the M. P. operated by the Iron Mountain and the El Paso route; for San Francisco it operated by the Ogden

gateway. After its relations with the D. & R. G. became closer, its efforts were, of course, much stronger to get the business to the Ogden gateway, but necessarily even before that time the two companies were very closely allied, because they had to depend very largely on the Ogden gateway. The M. P., however, became a little more strenuous for the Ogden gateway, and a little less strenuous for the El Paso gateway. All the lines leading west and southwest, without exception, have always solicited California business.

Interest of Mo. Pac. as between El Paso and Ogden gateways.

(2277) The Rock Island has two gateways for California business, one by El Paso and one by Denver, Colorado Springs and Pueblo. It tries to get the long haul. That is the universal practice among all railroads. The M. P. never attempted to send any business to California by way of Portland and the boat line down. Witness thought the U. P. worked business out of St. Louis in connection with the Wabash and the C. & A. Never knew of it to work California business via Portland. Business has moved over the M. P. to Portland via the Shasta route—general merchandise. (2278) He thought the O. S. L. was the better route, but using that line, the M. P. came in competition with the U. P., and necessarily it worked through the Ogden gateway with the S. P., because it could get the latter's assistance in the solicitation of business. A shipper is not interested in divisions. The M. P. participated in the east-bound traffic in hops and wool from Oregon.

Mo. Pac. never used Portland route; never knew U. P. to work traffic that way.

(2279) Wool moved from the Oregon Short Line territory via Ogden over the D. & R. G. and the M. P. That came mostly out of Idaho. Prior to the amalgamation, the S. P. was competing with the O. S. L. from Ogden to Portland. Doesn't remember the date, but knows the business ceased to move via Sacramento to Portland. Then the sole route left, from Ogden into Portland, was the Oregon Short Line. In competition for California business, M. P. found the Morgan line a factor. This was not true of the Oregon business. The Morgan line was not a serious factor there, because of other routes.

Traffic between Ogden and Portland.

(2280) Speaking of the so-called Gould Lines, the longest haul is from St. Louis to Ogden, but exclusive of the D. & R. G., the longer haul would have been from St. Louis to El Paso. It is a greater distance between the latter points than from St. Louis to Pueblo. As a separate road, the M. P.'s longest haul is to Pueblo. Witness was general freight agent of the M. P. system, which was the Iron Mountain and the M. P. road, and when speaking of the M. P. he was very apt to refer to the M. P. rather than the separate properties. Going to the Pacific coast, Chicago territory follows approximately the Illinois-Indiana state line down to the Ohio River. It would include Milwaukee, but going south, for example, if New Orleans were the destination, Milwaukee is not in Chicago territory. St. Louis is in St. Louis territory. There is also the Memphis territory, and the Mississippi River territory. Rates have usually been made by conference; transcontinental rates by the Transcontinental Association.

Mo. Pac.'s longest haul.

Boundaries of certain traffic territory.

Method of changing rates.

(2281) When a line wished a transcontinental rate changed, it was customary to submit its proposition to the Secretary of the Association, so that it might come up for discussion at the next meeting. Witness didn't recall the particular rules of the different committees. Some required a three-fourths and others a unanimous vote. Ordinarily, to secure Association action, it required unanimous recommendation, as the term is. Even though the U. P. before the consolidation opposed a rate change, witness always felt that if the S. P. wanted it, they could have it, because they had their own rails from the coast to the Mississippi River. "We were usually very largely guided by their views." Doesn't remember a case where the U. P. strenuously objected to the S. P.'s action and persisted in the objection.

(2282) "Where the S. P. wished to establish a rate, they established it; gave notice that they wished to put in the rate. The same thing is true of the Santa Fe, but it is not often the case. Usually they meet in conference and the rates are approved." Thinks that Association requires unanimous action. Witness thought it was absolutely essential for rates to be uniform, and this could only be accomplished through associations and conferences. Witness thought that each separate road was entitled to one vote. Before the amalgamation, the U. P. and S. P. were separately and very ably represented at those conferences. There are various reasons for initiating a rate—because of some new industry, or because of some established industry that needs relief, or because of over-production, or various other reasons. Witness thought it was of value to each road to present its own views at the conference. Mr. Stubbs, as a representative of the S. P., with all that line's predominant influence, didn't undertake to overrule everybody's objections in those meetings.

(2283) The Sunset route participated in competition on the east-bound business as against all the other roads. The U. P. and S. P. now have a joint agency at St. Louis. (2284) It was not very long after the consolidation, that the east-bound business of the M. P. fell off. If witness' representatives on the coast had a routing order, either via the Iron Mountain, or the M. P., care of the S. P. either at El Paso or Ogden, the S. P. would usually work with the M. P. agent to see that the business didn't get away from them. If the S. P. man found the California business could be worked by the M. P., and not by New Orleans, he would work with the M. P. as against the Atchison. The position of the D. & R. G. was distinct from that of the terminal lines. They were an intermediate carrier. They could not go to the S. P. either as an east-bound or a west-bound proposition, because they had to work with other lines either east or west-bound. They (2285) are not situated the same as a line that originates and destinates business. They could not very well exert influence, because they would antagonize their connections. From certain territory, that was also the position of the U. P. and intermediate carriers between Ogden

S. P. worked with Mo. Pac. on routing orders secured by it.

and the Missouri River. If the S. P. man heard that the Burlington was after business, he wouldn't go to the Burlington and work with it as against the Atchison, until he had tried the shipper first. If he found out from the shipper that the Burlington had the "inside," as the saying goes, he would then work with that line to get it as against all competition.

(2286) That is customary with railroads. It takes the consent of either the S. P. or the Atchison to change the rail rates to California. M. P. could not make a rate to California without the consent of the S. P. Neither could the U. P. before the consolidation, so that any number of changes might be suggested, but could not be made effective without the consent of the S.P. or the Atchison. That is true as to transcontinental traffic—California business. The fact that lines have separate representatives in the Transcontinental Association, doesn't necessarily indicate they are competing lines.

U. P. could not make Calif. rate without consent of S. P.

(2287) Before the amalgamation, the S. P. was impartial between the U. P. and the D. & R. G. and their respective connections, so the three lines had their separate representatives on the coast and in the east. After the amalgamation, the U. P. became the S. P.'s preferred connection, and the same necessity for the separate representation of the U. P. didn't exist. If the S. P. and D. & R. G. had instead been brought into close relations, there would have been no necessity for separate representation of those two roads. The S. P. and the O. S. L. were competing for practically all the business that moved through the Ogden gateway to Portland. The M. P., until the U. P. influenced the movement of the business over the O. S. L., could work with both. Thereafter it worked with the S. P., if it (2288) could not secure the business as against the U. P. and the O. S. L. Witness has never been to Portland, and knows nothing personally about the character of those two lines. In saying that a rate could not be made to California without the consent of the Atchison or S. P., witness didn't take into consideration the U. P.'s line to Portland and by boat down. In a general way, recalls the Canadian Pacific differential. The Rio Grande could not very well solicit business in connection with the S. P., because it was an intermediate line, and might offend its connections who were giving it business.

After amalgamation U. P. became preferred connection of S. P., and separate agencies not necessary.

Rio Grande's relations with connecting lines.

(2289) The D. & R. G. has to be friendly with the Rock Island, the C. B. & Q., the M. P., and the Frisco lines. When witness spoke of notifying the S. P., he had reference to business in and out of this territory east of the common points. Of course, the D. & R. G. could very safely communicate if it were an independent and intermediate line on east-bound business from the Pacific coast. It could deal with the S. P. representative, because it is the one line, and the S. P. is its only connection, but on the west-bound business delivered to it at Pueblo, it has various connections. The U. P. was competing with the M. P., the D. & R. G. and the other lines that were working with the latter. With reference to the U. P. attempting to make a rate into California via

Portland route poor string to tie kite to.

Portland, witness said: "I would hate to tie my kite to such a string." The difference between the Canadian Pacific and the U. P. is that the former has but one way of reaching San Francisco, whereas the U. P. has a direct line from Omaha to Ogden, and there a connection with the S. P., making by far the U. P.'s best line. It has a great advantage in respect to California business over the Canadian Pacific.

Railroads do not work their inefficient, against their efficient lines.

(2290) He never knew of a railroad company which had two lines—one first class and the other a mixed and indirect one—one very much inferior to the other, that attempted to work its indirect and inefficient line as against its direct and more profitable line. "They do a good many things, but hardly that." Carrying traffic by Portland, the U. P. would get the entire haul from the Missouri River, but the bulk of the business originates east of the Missouri River, and there is a large business that would not move by Portland and water, and therefore witness considered it an impracticable route to be used for the purpose of forcing a rate situation. The Portland route would be valuable only as a retaliatory measure in case the S. P. demanded unreasonable divisions. It could then be used to cut the Sunset rates, and everything else. If a weaker line, the Canadian Pacific, could demoralize the rate situation by a reduced rate, witness thought the U. P. could disturb the transcontinental rates a great deal.

Portland route could be used to cut rates.

Bad judgment if U. P. used Portland route.

(2291) Witness thought it would be bad judgment for the U. P. to attempt to disturb the transcontinental situation. He thought that it would be bad business judgment, under existing conditions for the U. P. to attempt to work the Portland route as against its direct route by Ogden. (2292) The relations between the S. P. and U. P. have always been friendly, and it would be very bad judgment for the U. P. to attempt to use the Portland line to San Francisco. (2293) The S. P. and U. P. would interchange business at Ogden as long as they could agree on rates. If the U. P. introduced a cut rate by Portland, the S. P. would divert its traffic by Ogden to the D. & R. G., and witness thought "the U. P. would be more seriously injured than the S. P." Witness never heard of a rate war starting from a difference between two connecting lines over divisions. They generally get together somewhere.

Probable effects from use of Portland route.

(2294) When witness stated that the U. P. would be hurt more than the S. P., he considered the loss to the former by reason of the more favorable position of the latter in California. The latter can control the California business by reason of the terminal facilities, whereas in meeting the competition, the U. P. would suffer because they could not get in there, and they would lose all their business. Witness was figuring on the Ogden gateway being entirely closed to the U. P., not on its simply being in the position that the D. & R. G. is now. (2295) Witness also took into consideration the fact that the Burlington, the Rock Island, the M. P., the Northwestern, the St. Paul, the C. & A., and, in fact, all the lines from Chicago to the Missouri River, and the lines east of Chicago,

can get to California without going over the U. P., and all those lines could divert their business to the D. & R. G. or the Atchison, and leave the U. P. practically bottled up. Witness didn't think these roads would be interested in the question to any serious extent east of the Missouri River, because the cut would start from the Missouri River.

(2296) If the Sunset rates were reduced by reason of the fight, witness couldn't say whether the all-rail lines would reduce their rates or not. Judging by a recent example, he would say no. The war would be between the lines west of the Missouri River. The rates have been cut from New York to Galveston, and the all-rail lines have not met it. The rates into Texas have been reduced, so the business is moving almost from (2297) Cincinnati to New York and New York to Galveston and other territory operated by the same lines. The eastern lines would be antagonistic toward the U. P., if it inaugurated a scheme of that sort to cut rates to California by way of Portland. Witness thought that the cut over the Portland route would spread, and that rates from Chicago, New Orleans and the Mississippi River would be affected.

(2298) Witness also thought that "If the rates from New York were affected, I doubt if the rates between the Atlantic seaboard and the Mississippi River and Chicago would be changed, except as the accommodation of locals changed them." The rate war would affect all the lines west of Chicago and west of the Mississippi River. It would also affect the rates from New York, but witness doubted if there would be a complete rate adjustment in the territory east of Chicago and east of the Mississippi River. As a general principle, railroads are opposed to rate wars. Witness didn't think, however, that the eastern connections would divert business from the U. P. to the D. & R. G., but they would keep up their rates and their relations with it, and handle business by the U. P., just the same.

(2299) Thinks the other railroads would hesitate a very long time before they would meet a rate established by the Portland route. All the lines can get into most of the territory in Colorado, Utah and California without using the U. P. (2300) Witness didn't know of any important town—of a town with a population of 5,000 or more, in Colorado, into which the other roads couldn't get without using the U. P., nor in Utah, nor in California. The U. P. has a large tonnage outside of transcontinental business. There is not a great deal that originates on its lines. The U. P. would be a serious factor in a rate war, and could disturb the other lines' revenue just as much as they could disturb its. Witness believed the U. P. could hurt the Burlington, the N. P., the Northwestern, and the Rock Island just as much as those lines could injure it.

U. P. as a factor in rate war.

(2301) The U. P. could accomplish this by demoralizing the rates between the Missouri River and Colorado and Utah points. Didn't think it was in the range of possibility for all this to occur and all of witness' answers have been more or less theoretical. The

situation in Texas, which witness referred to, is assumed to have been created by the Texas Steamship Company by rates from New York to Texas City. The other steamship lines from New York to Galveston have met the cut, but the all-rail lines have not reduced their rate. (2302) The Morgan Line and Mallory Line both met the rate. The cut has changed the movement of business through the St. Louis gateway and by the regular all-rail lines. Doesn't know of any freight going under these reduced rates from what is called the Mississippi Valley, but freight as far west as Cincinnati has gone to New York, and thence over the Morgan line. If the Portland line gave the U. P. any power with reference to trans-continental rates, it has never attempted to use the power.

West.

(2303) J. L. WEST.

Traffic official of M. K. & T. in St. Louis.

For twenty years connected with the M. K. & T. For last eleven years assistant general freight agent at St. Louis. Has also been stationed at Houston, Dallas and Kansas City. The eastern termini of the M. K. & T. are at Hannibal, Alton and St. Louis. It runs down through Missouri, Kansas, Oklahoma and Texas, reaching San Antonio and Galveston on the south, connecting with the Sunset at Houston, La Grange and San Antonio. The M. K. & T. routes most of its trans-continental business via the Texas & Pacific at Fort Worth and El Paso. It, however, handles a great deal of business via the S. P. and San Antonio.

M. K. & T.'s transcontinental route.

(2304) From St. Louis to San Antonio is 1,000 miles; from St. Louis to Fort Worth is 750 to 760 miles. Before the merger, the S. P. solicited St. Louis business preferably via New Orleans, and through Texas junctions. The Missouri Pacific, in endeavoring to route traffic to Texas junctions, met with the competition of the S. P.'s New Orleans route in the territory on and east of the Mississippi River. The U. P. endeavored to route St. Louis business via Omaha and Kansas City. The Missouri Pacific connected with the U. P. at Junction City, Kansas, and sometimes took St. Louis traffic up there. Business has moved via the Texas gateways as far north as San Francisco, but not to Portland. M. P. at times largely participated in east-bound fruit shipments from California. Received that from the T. & P. at Fort Worth.

Traffic has moved via Texas gateways to San Francisco, but not to Portland.

Diversion of citrus fruit.

(2305) Much of the citrus fruit is sold while it is on the rails, and using the southern route the shipper has greater possibilities of diversion in transit. For instance, if a car starts out destined to Kansas City via Texas, it can be diverted to Atlanta, or to any point in the southeast, or it can go to Kansas City and there be diverted to Chicago or St. Louis, or at northeastern points, while if it is routed by the north, it cannot well reach the southeast by diversions. Witness doesn't know the exact distance, but doesn't think there is a great deal of difference in the mileage from St. Louis to Southern California via El Paso and via Ogden. To San Francisco the northern route is shorter. Since the merger, witness has observed no preference shown by the joint agency as to the

south or north gateway. They have competed against other outside lines.

(2306) The S. P. representative has always worked with the M. P. in securing business via El Paso as against the Atchison. He was always quite ready to co-operate. That is true both before and since the merger. If the S. P. representative could control the routing, he would naturally take it via New Orleans from territory where the movement via that route would not be detrimental to the traffic, but if some of their Texas connections had an influence in the movement of it, witness never saw any evidence of their placing serious obstacles in the way of these connections, sending it that way and getting the business. When witness said the S. P. co-operated, he meant they didn't work against him particularly. They were willing to take the business that way. The route was open. Witness thought the divisions were about equal east and west of El Paso, but was not certain. (2307) Didn't know what the divisions were through New Orleans. Witness would say that if the S. P. agent found it was going to move by a northern route, he would co-operate with lines which could handle it through Ogden as against lines which would handle it with the Atchison. The right to divert is afforded by all the lines on citrus fruit traffic. The season of the year has great influence on the routing. Up to and including February, it moves almost exclusively via El Paso.

S. P.'s relations with its connections.

S. P. worked for Ogden route as against Atchison.

(2308) J. R. PEACHY.

Peachy.

Since February, 1909, traffic manager of the Chester, Perryville & Ste. Genevieve Railroad. Previously, for a year and a half, in private business. From 1885 to 1907 employed by the Illinois Central, the last 13 years of that time assistant general freight agent at Chicago and St. Louis; nearly three years in St. Louis; prior to that in Chicago. Prior to the building by the I. C. of the line to Omaha, all of its Pacific coast traffic was operated via New Orleans, because that was practically the only gateway it had, with the exception of a time, many years back, a route via Sioux City, the Omaha Line, Norfolk and Union Pacific, but that was not a very practical route. The I. C. moved traffic that way from all of its territory, from Chicago and south and east.

Traffic man. Formerly with Ill. Cent.

Before building its Omaha line, Ill. Cent. worked all Pacific coast traffic via New Orleans.

(2309) The S. P. when working with the I. C., naturally worked via New Orleans, because that was the only I. C. outlet. That gave the S. P. their longest haul. Whether it gave them their greatest percentage in net earnings, witness couldn't say. The I. C. met with the competition of the U. P. and Atchison. Got into Omaha about 1901 or 1902. After the consolidation, witness thought that whatever originated upon the lines of the I. C. south of the Ohio River, or on its connections operating between Louisville, Evansville, Cincinnati or via Cairo, would be solicited by both the I. C. and the representative of the Harriman lines via New Orleans, because that would be the natural way to send the business. The business north would naturally seek an outlet by the Missouri

In working with I.C., S. P. naturally worked via New Orleans.

Now, business from south of Ohio River solicited by I. C. via New Orleans; north of river via Omaha.

River. Both the Harriman lines and the I. C. would recognize that the Missouri River routes were the more practicable, but if the shipper desired to ship any other way, if he preferred to ship by New Orleans, there wouldn't be any obstacles placed to the business moving that way.

Interest of I. C. as between New Orleans and Omaha.

(2310) The interest of the I. C. centered in the New Orleans route. Hence, it assisted the S. P. in securing traffic that way. The I. C. secured more revenue by New Orleans than by Omaha, but with twice as long a haul. Witness doesn't recollect the percentages, but he would say, so far as the I. C. was concerned, the earnings by one gateway would be approximately as good as by the other, considering the difference in haul. Witness thought the net results to the I. C. via New Orleans or Omaha would be about the same. This does not apply to Southern Illinois, to Chicago, from which the bulk of the traffic came. The distance from New Orleans to Chicago is 918 miles, and from there to Omaha 513. The grades from Chicago to Omaha are not as great, witness thought, as those between Chicago and New Orleans, unless the I. C. diverted its business by its river line, the Y. & M. V.

(2311) The I. C. formerly worked all its traffic by way of New Orleans, because it was its only line, but after the opening of the Omaha line it worked traffic north of the Ohio via Omaha. Before the merger, the S. P. agent worked with the I. C. via New Orleans.

Before merger S. P. worked Chicago territory extensively via Ogden.

(2312) It also worked very extensively in the Chicago territory with lines via Ogden. In other words, it worked by all gateways. Before the consolidation, New Orleans was, however, their preferred route, but not since. The U. P. worked the Missouri River gateway. The two lines were competitive in that way. New Orleans was not the preferred route of the S. P. from Chicago territory. Prior to the consolidation, the S. P. worked the Ogden gateway very extensively, much to witness' chagrin, very often, if he didn't get their co-operation sufficiently by New Orleans. (2313) The U. P. worked exclusively by the Ogden gateway, but in working that route it necessarily also worked for the S. P.

Swingley.

(2313) C. W. SWINGLEY.

St. Louis Car Co.

From 1902 to May, 1908, traffic manager of the St. Louis Car Company. (2314) Since 1900 street cars have been built a great deal larger, and in routing witness was influenced by the clearances.

Routing of his business affected by clearances.

Clearances on the U. P. were not as high as they were via New Orleans and the S. P. This, and the fact that during the period from 1902 to 1905 witness had great difficulty in getting flat-car equipment, while the I. C. had an abundance of that equipment, caused him to route a good deal of traffic via New Orleans. (2315) It is difficult to say whether the Harriman lines solicited business via Ogden or New Orleans. After they found out about the clearances, they knew as a natural consequence if the cars were of a certain height they would go via New Orleans. Prior to 1902, witness was employed by Liggett & Myers Tobacco Company. Their

Pacific coast traffic all moved over the Wabash to Kansas City or Council Bluffs, and U. P. to Ogden.

(2316) Traffic to Portland went altogether over the Burlington and N. P. The principal reason that all California traffic went over the U. P. was that witness got far superior service that way. Witness knew Col. Aglar, the U. P. agent, and his friendship for Col. Aglar influenced him to some extent in routing, other things being equal. (2317) The route via New Orleans, since 1902, when witness entered the employ of the Car Company, has always been open.

(2317) A. M. FIELD.

Field.

St. Louis. With Wrought Iron Range Co.

Since August, 1905, traffic manager of the Wrought Iron Range Company at St. Louis. California traffic moves over the Wabash, Omaha, Burlington via Denver, and the Missouri Pacific, D. & R. G. at Ogden. Some business goes by the Atchison. Nothing goes south. It is a question of time with witness. Makes no Portland shipments, but ships on the S. P. between Portland and San Francisco. Some of that business goes via the Wabash, care of the U. P. at Omaha, some by the Burlington and N. P. at Billings; and then it is delivered to the S. P. at Portland; that is, since the 1st of January. Before that, witness couldn't ship that way. (2318) The rates wouldn't apply over the N. P. to Portland, and then over the S. P. Business had to go over the O. R. & N. into Portland, and then out. Prior to his present employment, witness was for twelve years employed by the I. C. For ten years contracting freight agent at St. Louis. Worked Pacific coast business at that time by New Orleans.

Routing of his business.

(2319) The I. C. had an agency in San Francisco, but witness thought this was not until after the merger; since the I. C.'s Omaha gateway was opened. The joint agency of the U. P. and S. P. at St. Louis didn't play any favorites. They were impartial. The New Orleans route gave the I. C. a longer haul. Nearly all the Pacific coast business was controlled by the other end, and that was the reason the I. C. had an agent in San Francisco. He worked chiefly on west-bound business. Witness didn't know how he endeavored to work business out there. After the Omaha line was opened, the I. C. endeavored to work California business by both lines. (2320) Tried to send it the way that would afford most revenue, provided there were not disadvantages that would interfere with the traffic.

Pacific Coast business controlled at other end.

(2320) P. M. HANSON.

Hanson.

Traffic Manager National Enameling &c. Co., St. Louis.

Since 1899 traffic manager of the National Enameling & Stamping Company. Previously traffic manager of the St. Louis Stamping Company from 1894, which afterwards became a part of the former company. Plants are located at Granite City, St. Louis, Baltimore, Long Island, New Orleans and Milwaukee. (2321) Ships to the Orient from the New York and Baltimore plants. Almost all goes by the Suez. Ships to the Pacific coast from Mil-

waukee and St. Louis, but not from New York or Baltimore. Has a distributing agent at San Francisco. Business to San Francisco moves over all the lines. The shipments consigned to the distributing agency witness routes, but he also sells direct to the jobbers on the Pacific coast, and respects their routing to a considerable extent.

(2322) The I. C. solicited business via New Orleans. In referring to "all routes" witness meant the Burlington, Wabash, Rock Island, M. K. & T., and Frisco, and to north coast points via the N. P. and G. N. Some of the business moved via El Paso, and some by Ogden. The I. C. doesn't call on witness any more. (2323) Witness has shipped over the I. C. via Omaha very recently. The business was routed on the coast. Not a great amount goes that way from his company. (2324) The joint agent solicits either by Omaha or Kansas City. Those are the only two ways that the U. P. and S. P. join in their solicitation. Witness doesn't come in contact with the Sunset route here in St. Louis. The joint agent would not object to taking business by the Sunset route if witness wanted to give it to him. When the joint agent comes into witness' office, he generally has a routing order, a request from the consignee for the routing of the shipment, and witness usually respects the request. Treating the U. P. and S. P. as one line, the route via New Orleans gives a longer haul than that via Kansas City or Omaha, but via New Orleans the U. P. does not participate.

Does not come in contact with Sunset line in St. Louis.

(2325) The question of equipment is important with witness. Under the rules of the western classification, it is necessary for the witness to get forty-foot cars, in order to reach the required minimum. Because of the difficulty in obtaining these cars, witness frequently asks the consignees to leave the matter of routing in his hands. The joint agent solicits witness' business whichever way he wants to send it, either by El Paso or the Missouri River. Witness didn't mean to testify that they only solicited by Kansas City and Omaha. I. C. has not solicited witness' business for four or five years. (2327) Lots of the lines leading west and southwest from St. Louis solicited. Witness' business moves over all the lines, the M. K. & T., the Iron Mountain, the T. & P., the Frisco-Iron Mountain, the Missouri Pacific, the Burlington and the U. P.—lines by the El Paso and Ogden gateways. As far as witness knew, the joint agent would have no preference between the El Paso and the Ogden routes. He would simply ask for the haul, and not designate any particular route.

Joint agent has no preference as between El Paso and Ogden gateways.

(2327) THOMAS E. ROOT.

Testimony immaterial.

Gesarich.

(2329) L. A. GESARICH.

Employe of Moon Bros. Carriage Co. of St. Louis.

Since February, 1892, employed by Moon Bros. Carriage Company of St. Louis. Has shipped to the Pacific coast principally by the

Atchison. Some by the U. P. Has also shipped some via El Paso. Has shipped two cars over the San Pedro. Ships to Portland by the Burlington, and some by the U. P. and O. S. L. (2330) The S. P., before the merger, solicited for the longest haul, either by New Orleans or by some Texas junction, and the U. P. by Omaha and Denver. The first joint agent, Lothrop, never called on witness. Townsley, who succeeded him, called once, and the present agent, through his contracting men, solicits the business. Nearly all of it is sold f. o. b. destination, and is routed by the consignees, and the joint agents solicit business whichever way they can get a haul. Occasionally they present routing orders. A great deal of the business is always routed by witness, and as to this, in their solicitation the joint agency has never expressed any preference as between their two lines. They expressed no preference between Ogden and El Paso.

Nearly all his coast business routed by consignee.

(2331) The Santa Fe formerly carried the bulk of witness' business. At the present time he divides it up, some over the Salt Lake route, some by the U. P. and S. P., and some by the Rock Island via El Paso. Prior to the merger, if the S. P. could not get the longest haul, the next best would be entirely satisfactory to him. He would be glad to get the business by Ogden, as against the Atchison. (2332) All of the business going over any of the lines to Ogden would go thence over the S. P. The same is true about business going via El Paso. All the California business was carried by the S. P., unless it went over the Atchison or the San Pedro. Shippers are not interested in divisions, but are interested in the service. (2333) Competition, witness has found, led to improvement in service. Service ordinarily would be based on the short line. The New York Central to Chicago is 47 miles longer than the Pennsylvania, but that does not make it impossible for them to compete and give fair service as against the Pennsylvania line. The Erie is also competing on freight business, and occasionally carries passengers. The Grand Trunk is in that business, too.

Prior to merger, if S. P. could not get longest haul, next best was satisfactory.

(2334) The U. P. and S. P. line has to go over the Sierra Nevadas and the Rocky Mountains. That is not true of the Sunset route. Other things being equal, the shorter line gives the better service, and is the preferred route for the shipper. (2335) Witness doesn't respect the routing requests of shippers. Would not inconvenience his plant for the purpose of trying to oblige a customer by shipping his business over some preferred route. Witness more interested in conditions at the point of origin than the point of destination. His business is of a nature that requires the largest sized equipment, and frequently he is not able to get cars from all the different lines.

(2336) LESLIE AGLAR.

Aglar.

St. Louis broker. From 1899 to 1901 was general agent of the U. P. Witness' father, J. F. Aglar, was joint agent of the two companies. He died in 1901. Witness had nothing to do with

St. Louis. Former Gen. Agt. of U. P.

solicitations. (2337-2338) Witness was formerly with the Drummond Tobacco Company. Their export business went by San Francisco. Nearly all of it over the U. P. From Ogden it all went over the S. P.

Schoenhard.

(2339) L. P. SCHOENHARD.

St. Louis. Traffic Manager Charter Oak Stove Co.

Since 1896 traffic manager of the Charter Oak Stove & Range Company. Majority of his California business has moved by the Sunset route via the U. P., O. R. & N. and S. P. To Portland it goes via the N. P. and the Billings route. (2340) In the last seven or eight years he has had a car by way of El Paso and the Iron Mountain. Doesn't recollect shipping over the San Pedro. Traffic generally routed at the other end, and sold f. o. b. St. Louis. He tries to respect the consignee's routing. At present, principal part of his Portland business goes over the Burlington and the Billings route. Has had shipments over the Rock Island and the U. P., which they delivered at Junction City, and has had shipments over the Wabash and U. P., and some cars over the I. C. via Omaha and U. P. None that way since 1907. Had quite a number of shipments that way from 1904 to 1907. Those shipments were routed at the coast or Portland. The I. C. only solicits in the shape of presenting a routing order. They never solicited witness' business by New Orleans. The roads leading to El Paso do not solicit him. (2341) His business is all routed at the other end. The agents understand that. Witness' trade in Portland is larger than in California. It is not very heavy to California. Never shipped by water except once thirty years ago, from New York around Cape Horn, before the U. P. was finished.

Routing of his coast business.

Broderick.

(2342) JOHN BRODERICK.

St. Louis. Rope business.

Since 1886 in the wire rope business in St. Louis. Formerly routed coast business via the I. C. and S. P., but the I. C. were not able to furnish the large cars required, and the Wabash having built cars for his purpose, the latter road gets the most of it. His shipments are very heavy. Most of the coast shipments weighed over 80,000 pounds, some as much as 130,000 pounds in one spool. Routing was done at the other end. He hasn't been able to do any business in San Francisco for some time. The California Wire Works sold to the American Steel & Wire Company some years ago, and after that witness couldn't sell any cable out there. (2343) Has since then shipped to Portland, chiefly over the Burlington and N. P. "Some of it moved O. R. & N. to Portland." Occasionally ships a car to Los Angeles, which is routed by him; some by Ogden; some by El Paso. The joint agent has solicited the business, but didn't state any gateway. (2344) Witness thought the business routed by the Wabash went via El Paso. The cars were too large to go through by the U. P. and S. P. The reels are very high on top of those cars. They couldn't get through the tunnels. Witness thought the Wabash delivered the cars to the Atchison at Kansas

City, and witness doesn't recollect just how they got to El Paso, but the S. P. took them into San Francisco.

(2345) LOUIS FEICKERT.

Feickert.

St. Louis. Traffic Manager Lemp Brewing Co.

Lives at St. Louis. Traffic manager of the W. J. Lemp Brewing Company. Has shipped not a large amount, but considerable, to the Pacific coast. It has moved from St. Louis by various lines, Iron Mountain, T. & P., and S. P., some by the Atchison; some by the Rock Island, Colorado Midland via Ogden; some by the M. P., D. & R. G. via Ogden; some by the M. P. and Wabash in connection with the U. P. Portland business has moved either by the M. P., D. & R. G., or the M. P., Wabash and U. P., or C. B. & Q., and the N. P., and witness thought some G. N., and some Can. P. The latter got the business from the Soo Line at St. Paul. Has shipped that route within the past year, and regards it as feasible. It is longer than the U. P. Its length didn't put it out of competition, because it made good time on the shipments.

(2346) The joint agent has no preferred route. They take it any way they can get the business—the long haul, if possible. They express no preference as to whether business shall go via Omaha or El Paso. Witness gets hops from California and the northwest. from the Willamette Valley. (2347) They usually move U. P. in connection with some line at the Missouri River. Some come in via Missouri Pacific or Rock Island, either from Pueblo or Colorado Springs. Thinks they are routed by the consignor. The Willamette Valley hops are routed over the O. R. & N. Witness buys the hops through a New York house. About half the hops come from New York State, and one-half from the Pacific coast.

Gets hops from Calif. and Willamette Valley.

(2348) R. MUEHLBERG.

Muehlberg.

St. Louis. Traffic Manager of Brewing Co.

Lives in St. Louis. Traffic manager of the Anheuser-Busch Brewing Association since 1900. Previously claim agent in the legal department of that Company for about twenty years. While the U. S. troops were in the Philippines, witness made shipments there, both via the Suez and San Francisco. (2349) Witness didn't then have charge of traffic, but he thought the San Francisco shipments were via El Paso. Witness thought it went out from San Francisco over the S. P. steamship line, the Oriental & Occidental. Couldn't say whether it went over the Pacific Mail or not. Business to California points moves through El Paso and Ogden both. It has never gone by New Orleans. Has two customers in Portland. Shipments for one go over the U. P., and for the other, the N. P. It is routed on the coast. He deals with the wholesalers out there.

Trans-Pacific business.

(2350) Ships for southern coast points by the San Pedro Those shipments move either by the M. P., D. & R. G. to Salt Lake, or by the Wabash—U. P. Has had pretty large quantities of hops coming in from the Willamette Valley. Witness thought the hops were consolidated from the various fields around in Oregon, and pre-

Hops from Willamette Valley.

sumes they are shipped to Portland, and reshipped from there to him.

Reicke.

(2350) LOUIS REICKE.

St. Louis. Manufacturing business.

Assistant Secretary of the Bridge & Beach Manufacturing Company, at St. Louis. (2351) Employed by them for twenty-six years. In charge of traffic department prior to 1901. Ships about an equal amount to Portland territory and to California. Probably a little more to the latter. Has branch houses at Portland and at San Francisco, from which the product is distributed. He aims to divide up the business as far as possible among the various lines. The U. P. before the merger solicited by Omaha or Kansas City, and the S. P. either El Paso or Omaha; also by New Orleans, but witness never gave them any business the latter way. (2352) They stopped soliciting by New Orleans because they found they couldn't get any business that way. Portland business moved over the U. P., the N. P. and the G. N. Probably had one or two cars by the Can. P. It was an unsatisfactory route. The N. P. takes most of it. The routing is controlled here. If a carload moves direct to a customer, his routing is respected. Remembers a few shipments going to Portland by the Shasta route. Doesn't remember who routed them. It very likely moved to Ogden over the U. P. It was some time ago, and most of his business was going over the U. P. for those points at that time. Also made shipments by the D. & R. G. and the M. P., and they would reach the Shasta route at Ogden.

Routing of his coast traffic.

Prior to 1901, S. P. solicited both via El Paso and Ogden.

(2353) Prior to 1901, when witness was in charge of traffic, the S. P. solicited from him both via El Paso and Ogden. The solicitors all understood that witness endeavored to apportion the freight equally between them, and they would come around and find out if it was their turn, and to try and get it if they could. If the S. P. solicitors couldn't get it via El Paso, they were well satisfied via Ogden. Usually shipped over the Iron Mountain to Texarkana and T. & P. to El Paso; Wabash and U. P. to Ogden; thinks probably M. P. and D. & R. G. to Ogden. Whatever lines, all California business eventually went over the S. P. Only way he remembers shipping by the Shasta route is that his manager at Portland objected, and requested him not to route any more that way. That was nine or ten years ago. (2354) At most, only two or three cars went that way. They went over the U. P., because most of his business at that time was moving that way. Cannot say the S. P. solicited either way, El Paso or Ogden. If they could not get it one way, they would take it another. At one time they solicited by New Orleans, but found out witness would not ship that way.

All Calif. business eventually went over S. P.

Manager objected to Shasta route to Portland.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME VI.

SALT LAKE CITY, APRIL 27, 1909.

(2355) WILLIAM S. McCARTHY. McCarthy.

Lives in Salt Lake City. For six years traffic manager of the Salt Lake Hardware Company. Previously in the railroad service, beginning in 1881 with the Grand Trunk as a messenger. Subsequent to that employed by the Michigan Central at Grand Trunk Junction, just outside of Detroit. (2356) Afterwards with the Wabash in Detroit. Then entered the employ of the U. P. in 1887, and came to Salt Lake with U. P. in 1897 as contracting freight agent. Left the employ of the U. P. in 1901, and entered the employ of the O. S. L. (2357) Prior to the acquisition of S. P. by U. P. in 1901, the route over which the U. P. worked traffic from the Atlantic seaboard was left to the consignee. In ocean and rail movement the favorite line was the Kanawha Despatch. Its business originates at New York, and moves by steamer to Newport News, thence over the C. & O. and Big Four into Chicago, and there delivered to the connections of the U. P. and afterwards delivered to U. P. at Omaha.

Salt Lake. Traffic Manager, Salt Lake Hardware Co.

Water and rail routes to Utah.

(2358) Very little, if any, went through St. Louis and Kansas City. The S. P. was then engaged in soliciting shipments to Utah from Atlantic coast points by way of Galveston; thence north through Fort Worth, Colorado common points, principally over the Colorado & Southern and Rio Grande to Utah. Traffic that was secured by the Morgan Line didn't move over the U. P. There was the most intense rivalry between the U. P. and S. P. agencies for that traffic. (2359-2362) Complainant's Exhibit 151, Rate card and pamphlet, gotten out by U. P. for distribution among shippers, showing rates in effect October 1, 1900, from all points east to Utah by all-rail lines, and also by ocean and rail lines, of which

U. P. formed a part; also showing time schedule. The gulf route was in rivalry with the U. P. for this business.

Time of U. P. freight, Council Bluffs to Ogden.

(2363) The fast freight time from Council Bluffs to Ogden was 54 hours. Witness' last information was that the fastest freight train between Council Bluffs and Ogden now took 100 hours and 45 minutes. The old time from Kansas City to Ogden was approximately 84 hours. Doesn't know what it is now. It is ordinarily about 24 hours longer than from Omaha. The distance from Omaha to Ogden has been decreased approximately thirty miles. (2364-2366) Complainant's Exhibit 152, Rate Card showing rates from the east via the all-rail and ocean and rail lines to Utah, issued by the Harriman lines, and showing rates in effect July 1, 1908. This includes the routes via the Morgan Line.

Percentage of Seaboard traffic via rail and water lines.

(2367) Previous to the merger, witness should say seventy per cent. of the business into Salt Lake from the seaboard moved by the rail and water lines, either the U. P. or the Gulf route,—that is 70 per cent. leaves New York and common points by water as against 30 per cent. moving all-rail. "MR. SEVERANCE. It is agreed that according to the time-card of the Union Pacific of December, 1900, the Overland Limited left Council Bluffs at 7:45 a. m. and reachd Ogden at 2:00 p. m. the following day and Salt Lake City at 3:30 p. m.; that at the present time the Overland Limited leaves Council Bluffs at 8:08 in the morning and arrives at Ogden at 4:50 the following day and Salt Lake City at 6:15. That in 1897, according to Volume 1 of the Pathfinder, of date February 20, 1897, the time of the Overland Limited from Council Bluffs (2368) to Ogden was as follows: leaving Council Bluffs at 7:55 a. m., reaching Ogden at 1:40 p. m. the following day and Salt Lake City at 3:10 p. m. The Fast Mail train of the Union Pacific left Council Bluffs at 3:15 p. m., and arrived at Ogden the second morning at 2:00 a. m. and at Salt Lake at 3:30 a. m. At the present time the Fast Mail leaves Council Bluffs at 3:00 p. m. and reaches Ogden at 5:45 a. m. of the second morning, and Salt Lake City at 8:15 a. m."

Time of Overland Limited, Council Bluffs to Ogden.

Solicitation of Seaboard traffic by Harriman lines.

The joint agent of the Harriman lines solicits witness' business from the Atlantic seaboard by the Morgan Line, from interior territory either by Kansas City or Omaha. If the business goes by the Morgan Line it moves as follows: "Morgan Steamship Line to Galveston, Southern Pacific lines to Fort Worth, Fort Worth and Denver City and Colorado & Southern and U. P." Witness' business is no longer solicited by the Kanawha Despatch in connection with the U. P. The O. S. L. and U. P. were separate, witness thought, about the latter part of 1897.

(2369) The O. S. L. then worked business out of Portland with the D. & R. G. or the U. P.—both ways. There was a time when divisions were canceled, and if they moved business east out of Salt Lake, it had to go D. & R. G. At that time, the competing lines into Portland were the U. P. and the Shasta Route, on the one hand, and the Short Line and the Rio Grande on the other.

Controversy between U. P. and O. S. L.

Witness doesn't know whether the two lines actively competed. The Portland train made the run from Omaha to Ogden in about 30 or 32 hours. That train was on for about sixty days. Witness had very little to do with the movement of wool to the east. He was familiar at that time with the efforts that were made to secure wool shipments to the east. (2370) "Q. In what part of this region does the wool originate that moves to the east chiefly? A. Why, at all wool-producing points along the Oregon Short Line Railroad, on the Union Pacific east of Ogden, on the San Pedro, and on the Rio Grande south and east of Salt Lake. Q. All around Salt Lake? A. Yes, sir. Q. There is some territory, is there not, lying between the Southern Pacific route west of Ogden and the Oregon Short Line, in California, Utah, eastern Nevada, and southern Idaho, that produces a good deal of wool? A. Yes, sir. Q. At the time the Union Pacific and Southern Pacific were competing with each other for business was there any competition for the wool traffic out of that region? A. Very little. The Southern Pacific wouldn't allow anybody in there very much." The O. S. L. worked that territory, but their efforts were more towards drawing the sheep to their line so that it might be sheared along their line. The Southern Pacific and the Short Line were competing for that business—the wool or the sheep—raised on the ranges in between those two lines. The Southern Pacific moved that traffic to the Atlantic seaboard via Galveston. It went west over the Southern Pacific and east over the Sunset line to Galveston. The Short Line moved it directly east by the Union Pacific.

Very little to do with wool business.

Wool traffic.

(2371) Does not know whether wool moved via the Southern Pacific as far east as Corinne (which is 20 or 25 miles west of Ogden) or not. Witness did not have very much to do with the movement of wool. He never saw any billings and never billed any out himself. All he knows about it is from information that came to him as an attache of the office from 1897-8-9 during the time he was connected with them. "Q. You don't know whether that (wool secured by the S. P. from the territory northwest of Utah) moved eastwardly over the Denver & Rio Grande or Union Pacific? A. No; I don't know of any moving that way." (2372) Business moved to Portland over the Shasta route in the latter part of 1897, only for about sixty days, by way of Ogden and Sacramento. That route competed with the D. & R. G. and the O. S. L., and also the northern lines into Portland. The divisions between the O. S. L. and U. P. were then re-established. They had been canceled, witness understood. He thought it was after the receivership of the O. S. L., but during that of the U. P. The fast train was taken off, and business was handled as formerly.

Did not know much about movement of wool.

Fast freight train via Shasta route lasted only 60 days.

(2373) Witness had nothing whatever to do with the making of the divisions or the interchange of business. He was then working for the U. P., and had nothing to do with the Portland business. The Kanawha Despatch moved business via steamer to Newport

News. Thence by rail to Chicago. Witness solicited most of the business in connection with friendly connections at Chicago, thence to Council Bluffs, and U. P. from there. Very little of it, if any, went by way of Kansas City. The connections of the U. P., the Northwestern, the St. Paul and the Burlington, all sought to get that business carried by the Kanawha Despatch to Newport News for Salt Lake City. The D. & R. G. tried to get it. The connections of the D. & R. G., the Burlington, the Rock Island, and the Missouri Pacific, also worked actively for that business in connection with the Kanawha Despatch. Witness didn't know what their choice of lines was, however. They might also have used other water lines.

Kanawha Despatch.

(2374) Some of the D. & R. G. connections solicit business via Newport News. Witness didn't know whether the D. & R. G. does at present, or not. They don't solicit his that way. Very little of his moves that way. It moves over the Mallory line from the seaboard, in connection with the International & Great Northern, Colorado & Southern, Rio Grande lines. Practically none moves via the Kanawha Despatch. The N. & W. Despatch, the Cumberland Gap Despatch, the Morgan Line, and the Mallory Line were all operating between Salt Lake City and the Atlantic seaboard, and were working business more or less actively. Two other lines have since been established, the Central Savannah line, and the Seaboard Air Line.

Water and rail lines.

(2375) None of the other lines have, however, retired from business. They all solicit business. Witness never knew of a car moving via the Morgan Line in connection with the U. P. Thought they wouldn't work with the Morgan Line because they preferred the longer haul from the Missouri River. They have worked with the Morgan Line since the consolidation, but not before, to his knowledge. That was all during witness' experience in Utah, up to the time of the consolidation in 1901. The S. P. was competing actively for business by way of Galveston. Didn't know the S. P. didn't have a water line to Galveston until after 1901. Knows they handled business that way. (2376) Didn't know that the S. P. never operated a steamer to Galveston until after 1901. Perhaps he should have said gulf ports, instead of Galveston. New Orleans is a gulf port. Didn't know a good deal of business was handled by the Morgan Line moving via New Orleans, and thence over the Illinois Central. Never knew any to move that way, or over the T. & P. from New Orleans, nor over the Gould lines. Morgan Line business now moves via Galveston, S. P. lines to Fort Worth, Fort Worth & Denver City and Colorado & Southern. It has been moving right along that way since 1901.

Southern ports of Morgan line.

(2377) None of it goes by New Orleans, to witness' knowledge. What the U. P. handled by way of Newport News was carried through the Missouri River gateways by its eastern rail connections. Now the business moves by gulf ports, and it gets the haul from Denver to Salt Lake. It also gets a good deal of all-

rail business through the Missouri River gateway. Business also moves by way of Savannah. Witness hasn't shipped any that way. Business moving from the Atlantic seaboard partly by water is still competed for by five water lines, the Morgan, Mallory, Kanawha Despatch, Central Savannah, and the Seaboard Air Line. There are also the Cumberland Despatch, the Norfolk & Western Despatch, and the Ashville Line—that was occasionally heard from, but was not actively soliciting. Witness thought the U. P. had rates by all those lines. At the time witness was soliciting, the Kanawha Despatch was the preferred connection, but he understood there were rates in by the other lines. His impression is that the U. P. then had no rates in by the Mallory Lines, but he couldn't testify as to that.

Five water lines that carry seaboard business.

(2378) Doesn't know whether the U. P. at that time had rates with the Morgan Line by way of New Orleans, or not. There was always a differential rate by way of the gulf from the east. That is still so. That is, the rates via the water and rail lines to Newport News and the lower Atlantic and gulf ports are lower than the all-rail lines to this territory. The difference is 39 cents on first-class, and grading down from that. It has always continued about the same. The joint agency solicits now by the Morgan Line, not by the Kanawha Despatch. It has also been solicited via the Central Savannah Lines, and it is solicited by the all-rail lines, too. They try to get business any way they can get it, preferring the long haul. (2379) The joint agent will move business from New York via the Morgan Line, if he can. If he were a U. P. man, he would want it through the Missouri River gateways. He would prefer to have it all-rail if you would send it through the Missouri River gateways. It is only the business that you are going to send by the Morgan Line, any way, that he is willing to take the short haul on. Shippers are not interested in divisions of the through rate. Atlantic seaboard territory is bounded by a line drawn practically north and south through Buffalo and east of Pittsburg.

Always a differential rate via Gulf.

(2380) Witness got his information about the present U. P. fast freight time between Ogden and Omaha, from a time-card. Other roads don't make better time from the Missouri River than the U. P. The D. & R. G. and its connections takes six or seven days from the Missouri River. That is a fair average. Couldn't say as to all the connections. Witness has been using the Missouri Pacific. His business from the middle west points in Illinois, Ohio and Indiana moves Wabash and M. P., and D. & R. G. Carloads from Chicago take eight to ten days. About the same time as on the U. P. The service on all the railroads that witness has used so far as time is concerned is not as good as it was in 1897.

Other roads do not make better time from Mo. River than U. P.

Service on all the roads not as good as in 1897.

(2381) His opinion is that time was lengthened on the U. P. in order to increase the net revenue, increase their train haul. Time on the Gould lines is due to deterioration of their property, and inability to make better time. Witness hasn't shipped over the

Hasn't shipped over U. P. for a year or more.

U. P. for a year or more. The number of the train that occupied 100 hours and 45 minutes from the Missouri River to Ogden was 53. Merchandise moving less than carload varies from seven to twelve days from Council Bluffs to Salt Lake City. The U. P. doesn't make their lengthened time. In the old days they very closely kept up to schedule. (2382) The joint agent doesn't solicit exclusively by the gulf route as against the Kanawha Despatch, but the former is the preferred route. The differential by the gulf and Newport News is and has always been the same.

Change in rates via water line from Seaboard.

(2383) The reduction shown on Exhibit 152 in the rate into Salt Lake from New York common points by this water line, from the rate shown on Exhibit 151, took place the 24th of November, 1906. Witness doesn't know the reason for that change. The schedule of rates that were then carried to Montana through Utah was applied to Utah common points. The new rates had previously been in effect to Montana points. Previous to that time, traffic had moved through Salt Lake City and through Granger to those Montana points. Rates were in effect that way. The G. N. and N. P. also reached these Montana points. Witness didn't know of any water rates applying to Montana. The water rates are made on a regular differential. Witness intended to testify that the all-rail rates to Montana applied to Salt Lake. The water rates follow the rail rates.

Tariff rates on wool.

(2384) It is stipulated that by S. P. tariff, Supplement No. 1 to Joint Freight Tariff No. 426, the S. P. by tariff issued February 5, 1909, effective March 17, 1909, provided for a commodity rate on wool in grease, carloads, minimum carload weight 20,000 pounds, from Corinne, Utah, Marmol, Nevada, and points shown in Group 3, pages 6 and 7, to New York, N. Y.; Boston, Mass.; and to points shown on pages 8 and 12 inclusive, as taking Group 4 rates, the rate being 207½ cents per hundred pounds, and the routing via Route 1, page 17 of this tariff. That routing is as follows: "Via the S. P. Co., via Rio Grande, New Mexico, and G. H. & S. A. Railway Company, T. & N. O. R. R. Co., L. W. R. R. Co., Morgan's L. & T. R. R. & S. S. Co., via New Orleans, La., S. P. Co.'s Atlantic Steamship Lines (Morgan Line) and New York Pier, or G. H. & S. A. Railway Company via Galveston, Texas, S. P. Co.'s Atlantic Steamship Lines (Morgan Line) and New York Pier." That is, all stations on the S. P. west of Corinne, and the points in the east, to which the traffic is routed are in what is known as Atlantic seaboard territory. There is also a note to this tariff as follows: "The privilege of stopping at Reno, Nevada, wool originating at Tecoma, Nevada, and points intermediate to Reno, Nevada, in transit to destination, is extended to shippers for the purpose of preparing packages for through shipment; in (2385) such cases, in addition to the freight charges, from original point of shipment to final destination, there will be assessed for handling to and from the warehouse at Reno, Nev., 30 cents per 100 lbs., which will

accrue to So. Pac. Co. (Pac. Sys.)." All the lines east of the Missouri River solicit freight in Salt Lake City; also the following lines east of Chicago: The Pennsylvania, New York Central, and the Erie. That freight is delivered here both by the U. P. and D. & R. G.

(2385) STEPHEN H. BABCOCK.

Babcock.

Salt Lake Commercial Club Traffic Manager.

Lives in Salt Lake City. Since January, Commissioner of Traffic of the Commercial Club Traffic Bureau of Salt Lake City. (2386) Entered the employ of the Michigan Central in 1865. Remained in their employ for ten years, and since that time in the employ of the N. P., D. & R. G. and R. G. W., with short terms of service with one or two other companies. Was the N. P.'s general utility man for North Dakota for three years. Then went to Denver as the local freight agent of the Chicago, St. Paul, Minneapolis and Omaha. Was then employed in the Gen. Supt.'s office of the D. & R. G. at Denver. Was for two years claim agent for the same road, and in 1885 came to Utah as contracting freight agent. Then became Right of Way Agent of the Rio Grande Western Construction Company, and became General Freight Agent of the R. G. W. in 1892, and three years later traffic manager. Resigned in April, 1897, but returned in August, and continued with that company until it was sold to the D. & R. G. in July, 1901, when he became assistant general traffic manager of the D. & (2387) R. G. system, and remained in that position until 1903.

Former Traffic Manager on Rio Grande.

Since then has been out of the railroad service, as a general thing. The eastern terminus of the R. G. W. was at Grand Junction, Colorado. It connected there with the D. & R. G. and Colorado Midland. It handled all classes of traffic in both directions, and participated in California and Portland traffic. Prior to the consolidation the U. P., so far as witness knew, worked Atlantic seaboard business via the North Atlantic ports, and the D. & R. G. worked in connection with the Morgan Line through New Orleans, and the Mallory through Galveston. The competition was very active. Witness didn't have exact figures, but thought the percentage of traffic reaching Salt Lake City from New York common points territory, as regards the all-rail and the water and rail lines, was from 70 to 85 per cent. in favor of the water and rail lines.

U. P. water route prior to 1901.

(2388) Business both ways between Portland and Oregon points and the east, passing through Ogden and Salt Lake City, in connection with the Rio Grande line, moved for a long time via the Shasta route. There were through trains. Over the U. P. it went O. S. L. As to traffic between Salt Lake and Portland, which the R. G. W. carried, it moved entirely by the Shasta route. Later, when the O. S. L. was in the hands of a receiver, witness worked both lines. The R. G. W. ran only to Ogden. During the O. S. L. receivership, witness didn't desert the S. P. route to Portland. "They desired us to work with that route so far as we could. In

Traffic between Salt Lake and Oregon.

fact, desired us to work altogether with it, but we worked with both lines."

Willamette Valley hops.

(2389) The hops from the Willamette Valley usually went to the Atlantic seaboard, and they took the Sunset route. The D. & R. G. was never able to secure much of them. The D. & R. G. had no agency in Portland until 1897, after the O. S. L. receivership, and they got some hops after that. All that the D. & R. G. could get, of course, came by the O. S. L. Those over the S. P. went around by their long route. The D. & R. G. was never able to get many hops, for the reason that it was Atlantic seaboard traffic that went by the Sunset route. Doesn't know that he could state what change, if any, took place in the movement of hops after the merger. Witness thought the U. P.'s ownership of the boat line from Portland to San Francisco had a commanding effect in any controversy that might arise between it and the S. P. (2390) If the U. P. reduced rates by that route, "all rates would have had to work to whatever basis they established." At the time of the receivership, the D. & R. G. worked business into Montana points in connection with the O. S. L. Met competition from the U. P., G. N. and N. P. Those divisions were not taken out during witness' time, but were after he left Utah. He understands that the gateway is now closed to the D. & R. G in respect to general merchandise traffic; that there is some interchange of certain commodities, such as coal and coke, perhaps, but that is all. Wool from this region is a very important traffic. In Utah it originates very largely south of Salt Lake City—south and east of it, some west, some north. There is a large clip of wool each year in Nevada, Southern Idaho, and in Montana.

Montana business during receivership.

Wool traffic.

(2391) The competition in wool commenced before it was taken off the sheep's back. The O. S. L. endeavored to attract the sheep away from the line of the S. P. west of Ogden. On the part of the Union Pacific they tried to attract it away from the D. & R. G. to Ogden, by trailing the sheep along into western Wyoming, and in southern Utah witness did his part trying to attract sheep away from the O. S. L. onto his line. When the S. P. was successful in attracting sheep, the wool moved via Sacramento and the Sunset route. Occasionally they had rates in from some points in Nevada east-bound through Ogden. Some buyers, perhaps, insisted upon taking it that way, and from some of the nearby points an occasional shipment went through Ogden, but the bulk of it they worked by the Sunset route. The O. S. L. shipped over the U. P. direct. Witness moved it sometimes by rail, but quite largely by rail and ocean via Galveston. Witness understood there was a tax per head upon sheep brought into Wyoming from Utah and Idaho, and the U. P. people, in their desire to attract the sheep, paid the tax. Most of the wool went to Boston, New England. Boston is the great wool market. (2392) After the merger, the disposition of the S. P. was more strongly to favor the U. P. as against the D. & R. G. Witness could not get definite figures, but except

for the fact that the traffic generally began to increase, he thinks the merger would have caused a falling off in the D. & R. G.'s westbound traffic. He thinks as a matter of percentage, there was a falling off, but the (2393) general movement in traffic increased very rapidly from that time on.

Merger caused S. P. to favor U. P.

Doesn't think that the D. & R. G. traffic received from California points over the S. P. from Oregon points over the Short Line increased in proportion to the increase in general business. Thinks it just about held its own. The S. P. and O. S. L. were the D. & R. G.'s only outlet, and it gave them all its traffic westbound. There was a general increase throughout the west in freight traffic. The Rock Island, which had for a long time worked steadily with the D. & R. G., meanwhile formed a new route via El Paso, which diverted some traffic formerly taken by the D. & R. G. to Ogden. The following divisions of through water rate from New York common points to Utah common points via the Morgan Line were in force during the 90's, up to the time witness left the service at Salt Lake. (2394) From the through rate there was first deducted five per cent. for marine insurance and any interior arbitraries, that is, the rate from some interior point to New York was deducted, and the remainder divided east of Fort Worth 37.92, Fort Worth to Pueblo 26.67, and Rio Grande system 35.41. When the traffic moved via the Atlantic ports, such as by Newport News and Kanawha Despatch, the ocean and rail lines up to the Mississippi River were given 20.4 per cent., after the deduction of the interior arbitraries, and the lines from the Mississippi to the Missouri River by the Rio Grande route 17 per cent. and the balance was subdivided west of the Missouri River 62½ per cent. to the Rio Grande lines, and 37½ per cent. Missouri River to Colorado junction points. In the case of the U. P., the lines between the Mississippi and the Missouri River, witness understood, got 16 per cent., and the U. P., after deducting 20.4 per cent. for the lines up to the River, got the balance. When Mr. J. A. Monroe was freight traffic manager of the U. P., he at various times suggested to witness that, while their lines were performing the same all-rail service, whether the traffic moved all-rail from New York or whether it moved through the Atlantic or Gulf ports, they should have all-rail revenue out of the traffic moving by the Atlantic or Gulf ports, and expressed the desire that witness should join with him and the other lines in demanding that basis of divisions.

Rock Island formed new line via El Paso

Divisions on water rates from Seaboard

(2395) That would have reduced the earnings of the steamship lines, and if it lessened their revenue to the point where it became unprofitable, its effect would have been to cause them to retire from business and throw it all to the all-rail line. Witness never considered Monroe's proposition favorably. The Morgan and Mallory lines had always been friendly, and given the D. & R. G. a satisfactory amount of traffic. (2396-2398) Correspondence between San Pedro district freight agent and witness, showing that the San Pedro had no tariffs naming through freight rates between Salt

San Pedro could form feasible route to San Francisco.

Lake City and San Francisco. The San Pedro makes connection with the Atchison for San Francisco at Daggett, Cal. That would be an entirely feasible route from Salt Lake to San Francisco by San Pedro road to Daggett, and thence into San Francisco by the Santa Fe. It is about 1,083 miles long. By the S. P. it is 786 miles from Ogden, 823 from Salt Lake.

(2399) Witness thought the S. P. rate from Salt Lake to San Francisco would be highly remunerative for a line composed of the San Pedro to Daggett and the Santa Fe to San Francisco. First-class passenger rate from Salt Lake to San Francisco by S. P. $31.10, by San Pedro and its connections $39.55, to Los Angeles by San Pedro $30. The rate over the S. P. to Los Angeles is $39.50. Distance from Salt Lake to Los Angeles via Southern Pacific 1,181 miles. (2400) Witness thought these rates would have the effect of forcing traffic to Los Angeles over the San Pedro, and to San Francisco over the S. P. Witness was never aware of any rates into Salt Lake City over the O. S. L. from Butte, in connection with the N. P. and G. N. via St. Paul. Witness didn't know the passenger schedule between Salt Lake and Los Angeles and San Francisco, also via Daggett over the various roads. He considered only the rates.

(2401) Witness thought time was an important consideration, but thought passengers would go from Salt Lake to San Francisco via Los Angeles to a certain extent, regardless of the increased length of time. The only through freight rates in effect between Salt Lake City and Ogden are on the S. P. (2402) Witness never knew of the route to San Francisco via Portland and the boat down being used. Thinks the fact they might have used it was an influential factor in having the S. P. favor them with traffic via Ogden. (2403) Witness thought it was 900 miles from Portland to Ogden by the O. S. L., and probably 750 or 800 miles from Portland to San Francisco by rail. If the U. P. carried business via Portland and the boat line, it would then be farther from San Francisco when it got to Portland than at Ogden. Still, witness considered it a practicable route. Witness thought that the U. P. could use the Portland route to compel the S. P. to adopt a friendly attitude. Mr. Charles F. Smurr, freight traffic manager of the S. P., who is now dead, "essentially admitted that to witness." (2404) Witness doesn't know that he ever had occasion to discuss the question with any living S. P. traffic man. Witness has talked on the same matter with Mr. Richard Gray, another S. P. man, but he unfortunately is also now dead.

Never knew the Portland route to San Francisco to be used.

(2405) It was in connection with a conversation in which witness accused the S. P. of trading with the U. P. and giving the latter business at Ogden because it closed up the through route to San Francisco via Portland. Witness thought it was a matter of common knowledge that the U. P. formerly operated that route from points east of Ogden. The use of the boat line occurred, as he had always understood, through the administration of Mr. T. J.

Does not know personally that Portland route was ever used, but it was common knowledge that it was used during T. J. Potter's time.

Potter, in general charge of the U. P. system. He died in 1889. The use of the boat line began during that time, but witness didn't know how long it continued. Witness got that impression by his experience in soliciting business, by reports of his agents, and agents of connecting lines, the Burlington and Rock Island, working with him. (2406) Doesn't know of his own knowledge that the boat line was ever used, but it was a matter of common information and so understood among railroad people.

(2408) Witness didn't know whether the U. P. had taken off the boats at that time, or not. He understood they were not operating it as a through line actively. The D. & R. G. didn't attempt to work any business that way. They had no occasion to attempt it, because the S. P. line was open to them, and it was the most direct and best line. Of course, that was true as to the U. P., but the O. S. L. and water line was a part of their own system, and they would naturally want to feed it. Witness doesn't know what the S. P. would have done to retaliate, if the U. P. had attempted to use the boat line by Portland. "They are the most resourceful people in the country, and they probably would have found a way to protect themselves." (2409) If the U. P. had attempted to use the boat line, witness doesn't know whether the S. P. would have retaliated by diverting business at Ogden to the D. & R. G. Cannot say what they would have done. It would have depended entirely upon circumstances.

(2410) Witness thought the U. P.'s possession of that line afforded it a strong leverage, and in his opinion and belief, from the operations of things, they made it very effectual. He thinks the S. P. did use the D. & R. G. at one time when that road was first built into here, to coerce the U. P. into their view of things. Witness thought it placed the S. P. in a comparatively independent position to what they had been before the D. & R. G. got here. The latter line was connected through to Utah in May, 1883. That gave the S. P. another outlet at Ogden, and released the S. P. from the domination of the U. P. Before that, the S. P. and U. P. had been in a position of equal power. Neither could dispose of the other. (2411) After that, the S. P. could use either the D. & R. G. or the U. P., but the U. P. and the D. & R. G. had no option whatever, except that the U. P., after the construction of the O. S. L., had that route. A great deal of traffic originates on the S. P. lines. After the merger, the U. P. entered into closer relations with the S. P. The percentage of the business which the D. & R. G. did after that fell off, so much so that it resulted in the building of the Western Pacific by the Gould people, witness understood.

Construction of D. & R. G. placed S. P. in an independent position.

Merger compelled the Goulds to build the Western Pac.

(2413) Witness doesn't think there is any danger of the U. P. ever attempting to work all their business to San Francisco by Portland. He never knew of the S. P. gateway at Ogden to be closed to the U. P., but as a matter of general impression and report, knew that the U. P. used the Portland route. He is quite certain that the S. P. wanted to shelter themselves against the U. P. using

it. (2414) Up to the receivership of the O. S. L. and O. R. & N. in the autumn of 1893, witness thought, the D. & R. G. worked with the Shasta route on Portland business. The business was not very important in volume, not enough so for him to establish an agency in Portland. The D. & R. G.'s haul, from Ogden to Salt Lake was short, and the divisions were so great against witness west of Ogden and the traffic so meagre that he never established an agency up there. The most valuable traffic around Portland was the hops, but it usually moved by the Sunset route to the east. Witness occasionally had shipments for St. Louis or Chicago, but his San Francisco agent looked after his interests in the Portland territory. They also carried through business to Colorado and beyond, but got no Atlantic seaboard business. It was taken by the Sunset route. If it got any, it was a small quantity that was gathered up by connecting lines. From Chicago and the middle west, business used to come through Denver and thence over the D. & R. G. and Shasta route to Portland. After the receivership, witness handled some, but not very much, business with the Short Line.

Portland business too meagre to justify agency.

(2415) During the receivership, he worked business from and through Salt L[illegible]e to Portland largely by the Short Line, but also worked with the S. P. at the same time. The Shasta route is probably 400 miles longer; about 900 miles via the O. S. L. The Shasta is a hard, mountainous route across two mountain ranges. The Short Line makes very much better time. (2416) Witness' recollection was that the O. S. L. and U. P. adjusted their differences in the autumn of 1897. The disturbance lasted, witness thought, from May to October or November. Didn't suppose that the O. S. L. did much of anything at that time with their line from McCammon down to Granger, except that they had very important coal traffic over there, and the merchants' modest merchandise traffic. The traffic moved up to Hampton, and down over that line, so that whatever traffic there was, was formerly handled by the D. & R. G., just as it had formerly gone in by Granger and under the same basis of rates. (2417) Wool and live stock, coal and merchandise originate over there.

Shasta route crosses two hard mountain ranges.

(2418) Practically all of the D. & R. G.'s business was exchanged with the S. P. at Ogden. It had another route to California for a short time, to Southern California via La Junta and Grand Junction, with the Atchison. At that time the Atchison owned the Colorado Midland. The Rio Grande Western road from Grand Junction to Salt Lake City got a haul of 292 miles. The D. & R. G. got no haul at all on that business. That was chiefly citrus fruits. (2419) The fruit was destined to Utah common points. Essentially all of his California business was handled in connection with the S. P. via Ogden. All of witness' business having origin or destination east of Pueblo and Denver, went via Ogden. Witness' company solicited that transcontinental business, as did all of its eastern connections. The U. P. was soliciting that business. So were its connections east of the Missouri River. The connections of the D. &

Nearly all of his Calif. business went via Ogden.

R. G. east of the Missouri River were also soliciting it. All this traffic went over the S. P. west of Ogden, except what the U. P. sent by the O. S. L. and the boat line.

(2420) The D. & R. G. could not make any rates to California without the concurrence of the S. P. Always had to have a joint tariff established. (2421) It is about 675 miles from Corrine to Sacramento, and about 2,300 miles from New Orleans up to San Francisco or Sacramento, and 1,800 miles by boat from New Orleans to New York, an aggregate of about 4,775 miles from Corrine to New York by that route. From Corinne to Omaha it is about 1,027 miles, and 500 miles farther on to Chicago, and 950 from there to New York. That makes 2,429 miles, as against 4,775. Witness thought the freight rate is sufficiently high to justify the S. P. in doing it. Presumably a tariff on wool over that route was filed for the purpose of making something on it. The matter of distance is not controlling, by any means.

D. & R. G. could not make rates to Calif. without concurrence of S. P.

(2422) If the U. P. used the boat line into San Francisco, and cut rates, it would break down rates over the Sunset, so the S. P. had more than any other line at stake in maintaining rates. That is the main reason why witness said the U. P.'s possession of the boat line gave it such a commanding position. Rates from Missouri River to California are made by agreement between the lines concerned as a general proposition—the members of the Transcontinental Freight Association. The Atchison lines could make a rate independent of the S. P., but the D. & R. G. could not. (2423) Any line could bring up a proposition to change a rate, but they could not establish it, except by agreement. Competition expedites railway service.

The Atchison lines could.

(2424) The U. P. might use its boat line, because they were not getting a reasonable share of the traffic, or because of divisions, or there might be financial reasons. The U. P. and S. P. formed a direct line. Recalls once that the U. P. became a little jealous of the D. & R. G., and charged witness with cutting rates, and Mr. Stubbs would haul me up and tell me to desist. The real motive for that was so that the business could move by the U. P. (2425) The U. P. exercised all the influence it could to make the S. P. favor them as against the D. & R. G. The U. P. had a shorter line, and could make much quicker time to Omaha, if it desired. The D. & R. G. and the Central Pacific would make a better line from the Missouri River than the U. P.-O. S. L. boat line. (2426) He didn't know of any attempt on the U. P.'s part to use the boat line to coerce the D. & R. G. or the Atchison. They had the power to use it, and it was an effective force in creating respect for the U. P. system.

The U. P. and S. P. formed a direct line.

(2428) DAVID ECCLES.

Eccles.

Resides at Ogden. Principally in the lumber business; also President of Utah Construction Company, which builds railroads and does other construction work. It is now building the West-

Ogden. Principally in lumber business.

Lumber mill at Hood River, Ore.

ern Pacific. Witness' lumber operations are in Oregon, at Baker City, Hood River. Hood River is 65 miles east of Portland, and the products of his mill are shipped chiefly to Utah and Idaho. Some to Nevada. (2429) Traffic from Hood River to Nevada now moves by Portland over the Shasta route. Until a year ago it moved by Ogden. There are no longer any rates by the latter route. The traffic originates on the O. R. & N. The rate is forty cents via the Shasta route. If witness ships from Hood River, he pays to the O. R. & N. a five per cent. arbitrary to Portland, making a total rate of forty-five cents. The rate via Ogden was forty cents, as far west as Wells. That is the same place to which he now pays 45 cents. The change occurred about a year ago. Witness has spoken to Mr. Reeves about the increase in rates.

Route from Hood River to Nevada points.

(2430) He is the general freight agent of the O. S. L. Witness has also spoken to Messrs. Miller and Stubbs. Their only excuse for the change is that the S. P. wanted the long haul. The boat line used to maintain a $5 passenger rate between Portland and San Francisco. (2431) The rate included berth and board. The Shasta route also made a similar rate, including berth in a tourist. The fight lasted the greater part of a year. The present lumber rate to Ogden from Portland by the Short Line is 37½ cents, and by the S. P. 40 cents. The shingle rate from Portland to Ogden by the O. S. L. used to be 50 cents. Witness is not sure whether this has been cut down to 47½, or not. There used to be a ten-cent differential and the lumber rate used to be 40, and it was cut to 37½, and witness is not positive whether shingles were cut at the same time. Doesn't know what the shingle rate is from San Francisco to Ogden, but thinks it is the same. The O. R. & N. Co. used to have light-draft steamers go up the river as far as possible and get grain and bring it down and load it at Portland, and take it by boat to San Francisco; that is, in territory that was routed by the Shasta route. Didn't know whether they brought wool and hops in addition to grain, but presumed they brought everything.

Rates from Portland to Ogden.

Connected with building of Utah and Pacific in 1898.

(2432) Witness was connected with the building of the Utah & Pacific road south of Milford. It was built in 1898. That line of road was projected 18 or 19 years ago, about 1890. A grade was built from Milford across the Desert to the head of the canyon that runs down to the Meadow Valley Wash. The grade was completed to the head of the canyon, and most of the grading done down the canyon, and the tunnels all built and timbered down nearly to the Meadow Valley Wash. It was then abandoned, and the understanding was nothing more was going to be done with it. Mr. McCune and witness were interested in the construction of the Utah & Pacific in 1898, having a fifty per cent. interest each. They built 66 miles from Milford out to Uvada, and operated it for about two years.

O. S. L. bought road under an option.

(2433) At the time it was built, they had a contract with the O. S. L., giving the latter an option on it for five years. In about two years the O. S. L. exercised the option. The Short Line exer-

cised its option after it became public that Clark proposed to build the San Pedro. A man named Hallenbeck or Hollingsworth talked to witness about the line about the time the Short Line exercised its option. (2434) Witness understood that this man represented the Clark interests. It was a month or two after that the option was exercised. Witness and associates built the Utah & Pacific for themselves. The option to the O. S. L. was given before work was commenced. The old grade was utilized, and 52 lb. steel was used on the line. The steel was obtained from the O. S. L. (2435) The work in 1890 went down nearly to the Meadow Valley Wash, probably five to eight miles this side of Caliente. Witness couldn't say exactly. That was 120 or 130 miles from Milford. In 1898 witness made a contract with the O. S. L. by which he built the road from Milford to Uvada, 66 miles. (2436-2443) Copy of contract between the O. S. L., of the first part, Eccles and others, of the second part, containing the option above mentioned. (2444) The substance of the contract was that witness utilized the old right of way and material, got the rails and the rolling stock from the O. S. L., and the O. S. L. got an option for five years to buy the road, and it exercised the option in about two years, early in 1901. About all there was to it was the laying and surfacing of the track, and the building of the bridges, and to furnish the ties. Had to put the grade in condition.

Option contract.

(2445) The destination of the lumber which moves via Sacramento from Oregon is anywhere from 150 to 200 miles west of Ogden. Didn't know the reason for the change of route from the O. S. L. via Ogden to the Shasta route to Nevada points. (2446) The Nevada points were local to the S. P. Mr. Stubbs said the matter was mostly in the hands of the local man here, Mr. Miller. Presumed that the San Francisco office of the S. P., having this line from Portland to these local points, required traffic to move that way, in order to give the S. P. the long haul. It is 40 cents from Portland to Wells and those points witness spoke of, and 37½ cents from Portland to Ogden. Witness thought the rate war between the boat line and the S. P. was eight or nine years ago, but was not positive.

Change in lumber route to Nevada points.

(2447) It was on several times, and one time lasted all summer. It might have been during the receivership of the O. R. & N. The boat left Portland on Saturday night and reached San Francisco Tuesday morning. (2448) The boats handled everything; carried grain and other things down, and brought sugar back. It was claimed that the little light river boats only drew ten inches of water. This was in order that they might go as far up the river as possible, to bring down the grain. The O. S. L. allowed the taxes on the Utah & Pacific grade to remain unpaid. (2449) Witness thinks the taxes were gotten rid of, but doesn't remember paying them. Thinks they were remitted or something.

Unpaid taxes on Utah and Pacific.

Love.

(2449) STEPHEN H. LOVE.

Salt Lake. Has charge of traffic for Z. C. M. I.

Resides at Salt Lake City. For 21 years employed by the Zion Co-operative Mercantile Institution; in charge of their traffic since 1891. (2450) His total tonnage for 1908 was 16,000 tons, including shipments in, and what he controlled going out. Most of his goods came "from the middle west and Atlantic seaboard—the Atlantic seaboard and some products from the west." Atlantic seaboard business comes chiefly by the Gulf port lines. Before the merger, the U. P. solicited through the Missouri River gateways via the Kanawha Despatch, the Cumberland Gap Despatch, and some other water line that witness didn't remember; the S. P. by the Morgan Line. As a rule, witness used the Rio Grande road west of Denver.

Seaboard traffic.

(2451) Never uses rail lines out of New York, except on shipments that he is in a particular hurry for. Fully ninety per cent. of seaboard stuff moves via the gulf. Witness thought the Morgan Line began to solicit Utah business in 1892 or 1893. The competition between the U. P. and S. P. was keen. Since the consolidation, the Morgan Line is their preferred route. (2452) Witness' traffic from central states and Chicago territory moves over most all the lines, through the Mississippi River gateways and through Chicago —U. P., Burlington, Missouri Pacific, C. & N. W., R. I., and reaches Salt Lake either over the U. P. or D. & R. G. Ships from the west what are known as California products and canned goods from the Columbia River—canned salmon, also some Alaska salmon. The latter comes in sometimes through Portland by the O. R. & N., and sometimes through San Francisco by the S. P. The packers in Alaska virtually control the routing.

Traffic from Central States and other points.

Rate on salt.

(2453-2454) Witness relates conversation in regard to a rate put in on salt in the territory tapped by the Short Line, in which Eccles said he had to do that in order to invite the sheep men to shear along his line in competition with the S. P. Witness cannot do business very far west of Salt Lake City, because the transcontinental rates from New York, Pittsburg and Chicago to San Francisco are much less than the rates direct to Salt Lake, and the California and Portland jobbers can come away east on that account. The rates from those points east are established on a basis, about the same as the rates from Salt Lake out, and therefore they have a big advantage over the Salt Lake jobbers in territory that witness felt was naturally tributary to Salt Lake. Complainant's Exhibit 153 is a comparative statement of rates on Salt Lake, Portland, San Francisco and Los Angeles on a lot of staple commodities; also showing local rate from those points, and also from Portland, to points midway between Salt Lake, coast points on the O. S. L., the S. P. and the San Pedro.

Comparative statement of rates.

The local rates are graded according to distance out of Salt Lake and out of San Francisco. The rate out of San Francisco on the S. P. is graded only in a measure. The rates there are

established more on a blanket idea. (2455) The system of rates is very detrimental to Salt Lake. Competition with the San Francisco jobbers and the Salt Lake jobbers goes over in what is called the Ely country, that is in eastern Nevada. On the Short Line and San Pedro route the distance down the jobbers could go depended altogether on the commodities, the differential being greater on some than on others. (2456-2459) Complainant's Exhibit 153. There are no through rates via the G. N. and N. P. to Butte in connection with the O. S. L., except on the added locals.

(2460-2463) Complainant's Exhibit 154 is a certified copy of petition made by a representative of Senator W. A. Clark and others to the City Council of Salt Lake City, Utah, Sept. 25, 1900; also letter from the defendant, W. A. Clark, dated October 2, 1900, referring to said petition; also report from Committee on Streets, etc., relative to said matter; also ordinance vacating Pioneer Park, and repealing an ordinance dedicating block 48, of plat "A," commonly called "Pioneer Square," in Salt Lake City. (2464-2465) Chapter 49 of the Laws of Utah for 1901, authorizing cities to grant depot sites to railroad companies, is read in evidence. (2466) Mr. Gibbon, the Clark representative, in his argument in support of the foregoing law, stated that the San Pedro would be an independent road. (2467) Mr. Gibbon also referred to the opposition that his Company was encountering from the O. S. L. (2468) Winslow S. Pierce, from New York, and local officials of the U. P. and O. S. L. were instrumental in having Chapter 2 of the Laws of Utah, 1901, entitled, "Railroad Corporations," adopted.

Vacation of Pioneer Park for San Pedro.

Witness relates conversation with Mr. Pierce, in which the latter stated "that they were going to reorganize the Union Pacific Railroad and they wanted to file articles of incorporation in Utah, and it meant a very great deal for the people of Salt Lake—it would virtually make the headquarters of these vast systems of railroads in this city, and a lot of things of that sort;" he also stated what the U. P. proposed to do, among other things, to double track the U. P. from Omaha to Salt Lake, and to build a line to California. (2469) Nothing was said indicating that it was proposed to purchase the stock of the S. P. Co. Witness didn't mean to imply there was any improper influence that suppressed opposition to the bill. Thinks the members of the Legislature were misled into believing the bill was merely a codification of existing laws. Didn't think the members read the bill. (2470) A new bill, which was to a large extent a codification, but had a great deal of new matter in it, was passed two years ago.

Conversation with Mr. Pierce of U. P.

(2471) That bill was introduced before the Legislature in a legitimate way and considered properly—given all the consideration that was necessary. Witness states that the conversation with Mr. Pierce above referred to, was either the first day of the session of the Legislature, or the day before the Legislature convened in January, 1901. Witness was elected a member of the senate of that Legislature the fall before. Witness' attention is called

to the fact that the bill he is talking about and the bill Mr. Pierce spoke to him about was passed in 1897, not in 1901, and that the bill for the incorporation of the Union Pacific Railroad Company, following the reorganization and conferring the vast powers that witness speaks about, was passed in 1897. Witness does not know that Mr. Pierce told him in 1901 that the Union Pacific Railroad was about to be reorganized, but the conversation was along that line. "Q. You testified just now that he told you that the Union Pacific was going to be reorganized. A. That was my impression, Judge. * * * Q. Well, don't you think your memory is bad on that point? A. It may be. I can't remember all of those little details; I don't pretend to; I know there was a general conversation along that line. * * *

Details connected with conversation with Mr. Pierce.

(2472) "Q. Don't you know that in 1901, at the time of this conversation, the receivership had terminated four years before, the company had been reorganized, that headquarters were located in Omaha, and the company had been incorporated under the act of January 22, 1897, which conferred upon the Union Pacific all the powers that were conferred by the act which has been offered in evidence here, except possibly the power to own the stock of lines that were not connecting? You don't know that? A. Well, I was not a member of the Legislature at that time. I know that there was a lot of new matter in the bill which Mr. Pierce introduced. I know that it was vital matter." Upon being further pressed, witness states that he will not insist on the statement he made to the effect that Mr. Pierce told him they were going to reorganize the Union Pacific Railroad Company and put headquarters at Salt Lake. "I know he did say that it meant $25,000 in fees to the State. I know he said that, because that was one of the arguments he used."

(2473) "Q. Well, that statement was made good, wasn't it? The State did get the fees, didn't it? A. I understand it did; yes, sir. * * * Q. You testified here as to what Mr. Pierce said to you. Now, do you mean to say that he said that or that you supposed that that would be the result? (Referring to location of headquarters at Salt Lake.) A. Well, I am not going to swear on detailed statements of that kind, because my memory is not sufficiently strong. Q. Well, you have done it, and I want to know which is correct? A. I don't recall that I did swear to it. Q. You swore here that Mr. Pierce told you that if this bill were passed— A. No; I think if Mr. Severance had asked me at that time if I would swear that he did that, I would say, no; I wouldn't swear to it. Q. Well, you are testifying here. A. Yes. Q. Where do you draw the line between statements which you are swearing to and statements to which you are not swearing on the stand? A. Well, I can't go back ten or twelve years and recall in detail a statement made at that time, and I wouldn't swear to it at all."

(2474-2475) Further examination of witness as to his conversation with Mr. Pierce. (2476) Witness is asked if the bill which he referred to is the one that afterwards became chapter 2 of the Acts of the Utah Legislature, passed at the fourth regular session of the Legislature of Utah, in 1901. He states that he thinks there was more than one bill. "I wouldn't want to say whether that was the particular bill or not." There was more than one bill in which this question was involved. Witness is unable to say which bill it was that he stated was rushed through with such haste. Witness states that he can locate the bill if he has time to look at his files. Counsel states that he can have all the time he wants, and he was requested to find it. Witness thinks that Pioneer Park, the land referred to in the petition of Mr. Gibbon and the ordinance of the City Council and the first act of the Legislature, read in evidence by Mr. Severance upon direct examination, had reverted to the city.

(2477) The San Pedro Company never got possession of that land at all, and it always continued as a park. Testimony as to the title to the Pioneer Park ground that the San Pedro Company was willing to take. (2478) Statement made by Mr. Gibbon about Oregon Short Line thugs was made in the Senate Chamber on the Sunday they had this conversation about the measure that Mr. Gibbon wanted to get through, being Chapter 49 of the Laws of 1901, approved March 14th, 1901. The bill was then being considered in the Senate, having passed the House. "Q. Don't you know that at the time you say Mr. Gibbon spoke of the Oregon Short Line thugs there had been no conflict or controversy on the ground between the Oregon Short Line forces and the San Pedro forces? A. No. Q. You don't know that the San Pedro's engineers didn't go onto that line until the 20th of March, 1901? A. No, I don't know anything about the details of the matter. * * * Q. Do you mean to swear, then, or not, to the statement that you said Mr. Gibbon made with reference to that? A. No; I wouldn't swear to a detailed statement of that sort. Q. Well, you did on direct examination. Do you mean to qualify that statement? A. Well, now, when it comes right down to a detailed statement of that sort, I wouldn't want to swear to the exact language used by Mr. Gibbon with reference to that matter. (2479) Q. Don't you think, then, you ought to be a little more careful in your statement, Mr. Love, as to what you do swear to? You have been swearing to that right along. A. Well, I am making a general statement."

Gibbon's remark about O. S. L. thugs.

The transcontinental rates from the Missouri River to Pacific coast were lower before the construction of the San Pedro than now. The rates, however, to Salt Lake are lower now than then. In those days, however, by private arrangement it was possible to get almost any kind of a local rate outside of Salt Lake, but since the last amendment of the Interstate Commerce Act the situation has been changed. Year in and year out witness thought

Situation as to rates has changed since passage of Hepburn Act.

the rates to Utah in reality were lower then than now, but, so far as the published tariff is concerned, the rates now are lower. The discrimination against Salt Lake in favor of Pacific coast from points east of the Missouri River has always existed for the last twenty years.

(2480) The adjustment of rates as shown by Complainant's Exhibit 153, has existed, generally speaking, for twenty years, maybe longer. "Q. You took Huntington as a point for comparison in one of the statements, or perhaps more, embraced in Complainant's Exhibit 153, and testified specially with reference to that in answer to questions by Mr. Severance on your direct examination. Why did you select Huntington? A. The local tariff of the Oregon Short Line Railroad runs out to Huntington, the local tariff of the O. R. & N. is eastbound to Huntington, and the Salt Lake jobbers, in complaints that we have had up with the railroads in times gone by, have always felt they were entitled to go out in their jobbing business as far as Huntington on the O. S. L. and north on the O. S. L. as far as Red Rock or Dillon, Montana, and west to Elko on the Southern Pacific, and east to Rock Springs, Wyoming, on the Union Pacific, and Grand Junction on the Rio Grande. Q. Do you think you are entirely fair in selecting Huntington as the point for comparison as between Salt Lake and Portland? A. I think so, yes sir. * * *

Salt Lake rate adjustments.

(2481) "Q. Don't you know that Huntington is nearly 100 miles nearer Portland than Salt Lake City? A. I wouldn't be surprised at that. Q. Do you know the distance from Salt Lake City to Arcadia? A. No, sir. Q. You don't know that it is about equidistant between Portland and— A. I only know in a general way that we regard Huntington as being about half way. Q. That doesn't answer my question. My question is, if you don't know that Arcadia is about midway between Salt Lake City and Portland? A. I never checked that up. Q. And that the rates at this midway point—that is, the adjustment of rates —puts Salt Lake City and Portland on an equality, at this midway point? Don't you know that? A. I testified, I think, in my direct examination, that the rates from Portland and from San Francisco and from Los Angeles, as a general thing, were about equal when you struck a midway point. Q. Why didn't you take the midway point, then, in preparing the statement Exhibit 153? A. Because in all our controversies, as I have said, between the railroads and ourselves, the jobbers here have always selected Huntington as the point. Q. And that is 100 miles nearer Portland than Salt Lake City? A. Well, that is all right; I think that is fair. I don't see why they should haul goods to Portland and perform a service of a thousand miles and haul them back and then complain because we talk about a hundred miles farther east."

Witness states that they have been unlawfully doing this for over twenty years and that they have never been relieved from the fourth section of the Interstate Commerce Act.

(2482) "Q. Do I understand you, in your reference to the fourth section of the Interstate Commerce Act, to mean that in your opinion it is unlawful because the railroads are carrying across the continent to San Francisco and other Pacific coast terminals at a lower rate than they carry it to intermediate points without the previous consent of the Commission? A. Yes, sir. Q. You mean it is unlawful in that sense? A. I think so.

"Q. Coming back again to Huntington. You have not shown the relative position of Portland and Salt Lake City, or of Salt Lake City and San Francisco, or of Salt Lake City and Los Angeles, or of Salt Lake City and Sacramento, or of Salt Lake City and Denver, at points equidistant between those cities, on statement Exhibit 153, have you? * * * A. From a mileage standpoint? Q. From a mileage standpoint; yes. A. No, sir; only approximately."

Since 1901, numerous reductions made by S. P. in class rates to points west of Ogden.

(2483) Since 1901 there have been numerous reductions in class rates from Salt Lake to points on the S. P. west of Ogden. There have also been reductions from Ogden west, and rates from Salt Lake, which were formerly made up of the combinations of locals on Ogden, were made the same as from Ogden. The condition out to the Ely country has been much better, so far as Salt Lake is concerned. It is a couple of hundred miles west of Ogden. However, rates from Salt Lake up to points north of Pocatello have been increased, not commodity, but the class rates generally. Doesn't think they were increased to Pocatello, but north of Pocatello. The distributing rates out of Salt Lake are not fair, as compared with the rates from Denver, and California cities, and other cities. (2484) Witness made an examination of this, comparing the rate for a distance of 200 miles out of Salt Lake with the rates out of Denver. He found that for 200 miles out of Denver and Salt Lake City, respectively, the rate per ton out of Salt Lake was between $15.00 and $16.00, and out of Denver it was $9.00. (2485) He testified, however, that the bulk of the jobbing business out of Salt Lake City was handled within 100 miles of that city. Witness couldn't say whether the rates for 100 miles out of Salt Lake were higher than the rates for 100 miles out of Denver, but promised to look it up. "Q. I would be glad to have you look it up, if you can get it accurately; I would like to have the comparison. A. It might not be very accurate. Q. I don't want it unless it is accurate."

Salt Lake rates as compared with Denver rates.

(2486) Witness presents a statement showing fourth class rates approximately 100 miles out of Salt Lake on the different railroads, and for approximately the same distance on various railroads out of Denver. Witness states that he had to take what tariffs he had in his office and was compelled to use the rates out of Ogden for purposes of comparison, but presumed they were practically the same out of Salt Lake. "Q. * * Don't you know, Mr. Love, what the rate is from Salt Lake City to Tecoma?

(2487) "A. No, I couldn't say right off; I couldn't give you that rate in my office. I suppose it is there in the tariffs, but I didn't get back here on time as it was, and I was in a hurry. Q. Don't you know that the rate from Salt Lake City to Tecoma is the same as from Ogden to Tecoma? A. I imagine it is; yes. Q. What is the distance from Salt Lake City to Ogden? A. Salt Lake City to Ogden is 37 miles. Q. Then, you have shown here, in the case of the Southern Pacific, a 59-cent rate for 113 miles, and from Salt Lake City to the same point the rate is the same, 59 cents, for 150 miles. A. Well, I don't think that is material, for this reason: Our rates here are arranged on a certain basis; for instance, Salt Lake and Ogden and Provo are common points. We start on the mileage basis when we get south of Lehi; the rates from Ogden and Salt Lake apply. So if you use the mileage, the rates are the same. For instance, the mileage from Salt Lake to Lehi would only be 31 miles, but it would be 67 miles to Ogden, and the same rate applies. The same is true of the north country. Salt Lake and Ogden are common, north of Cache Junction, I think. * * *

"Q. You were asked to bring in a statement comparing the rates out of Salt Lake City with similar distances out of Denver, weren't you? A. Yes, sir. Q. And you brought in a statement with reference to the Southern Pacific which shows a rate of 59 cents to Tecoma from Ogden, 113 miles, when you know that the rate from Salt Lake City to Tecoma, 150 miles, is the same. A. No, I don't know that; I don't know that the rate from Salt Lake to Tecoma is the same. I have not checked that up. We do very little business at Tecoma and I could not say whether that is true or not, but I imagine it is, for the reason I have given you. (2488) Q. Your opinion is that it is the same? A. That it is the same. * *

Salt Lake rate adjustments.

"Q. * * I understood you to testify upon this same subject before recess; that upon figures compiled by you some time ago it appeared that the rates out of Salt Lake City, on fourth-class, for 200 miles, were about $16 a ton as against $9 for Denver. Did I understand you correctly? A. I think $9 or $9.75, something like that; between $9 and $10 for Denver, and something over $15 for Salt Lake." Witness does business with Blackfoot, Idaho, Idaho Falls, American Falls, Soda Springs—all points on the Oregon Short Line. Witness knows that the rate from Salt Lake City to Blackfoot, Idaho, 195 miles, is 40 cents, (2489) on fourth class. To Idaho Falls, 220 miles, 50 cents; to American Falls, 194 miles, 40 cents; to Soda Springs, 192 miles, 42 cents. Witness does not recall the fourth class rate to Granger, Wyoming.

"Q. Don't you know that the rate to Bryan, which is the next station to Granger, on fourth-class, over the Union Pacific from Salt Lake, is 42 cents, a distance of 200 miles? A. Approximately there. The rates on the Oregon Short Line and the Union Pacific are very much less than on the other railroads. Q. Very much

less than on the other one? A. Yes. Q. You didn't mention that this morning. A. I wasn't asked to mention it. I said that I took six railroads—I think it was six railroads—running out of Salt Lake and six railroads out of Denver and six railroads out of Kansas City and those other towns that I used, and averaged the rate. That was my testimony. * * (2490) Q. So, it is true, then, that the rates on the Union Pacific and Oregon Short Line are very much lower than on the other lines from Salt Lake City? A. Yes, sir, very much lower.

Rates on O. S. L. and U. P. very much less than on other roads.

"Q. How about the Southern Pacific? A. The rates are not so low on the Southern Pacific. Q. Not so low as on the Union Pacific? A. Not so low as on the Short Line; I haven't compared them with the Union Pacific. I say, offhand, I wouldn't say the rates of the Southern Pacific are quite as low. Q. Would you say the fourth-class rate for a distance of 200 miles out of Salt Lake City on the Southern Pacific is 75 cents or 80 cents or anywhere near 75 cents or 80 cents? A. I am inclined to think it would be less than that on account of these new rates that have been published. Q. What do you mean by the new rates? A. Well, the rates have been published within the last two or three years, since that country opened up, up there. Q. You think they are considerably less than 75 cents, don't you? A. I wouldn't say. I would want to look that up. I don't know. Q. Do you still think it is a fair statement that the rates, at least so far as the Union Pacific and the Oregon Short Line and the Southern Pacific out of Salt Lake are concerned, are anywhere near $16 a ton? A. No, sir, it is not fair as to those roads; but we were talking about the general distributing rates out of Salt Lake. Q. Those are pretty important lines around here, aren't they? A. Pretty important. I am inclined to think, by saying that, that the jobbers of Salt Lake have always considered that the rates on the Oregon Short Line out of Salt Lake are fair and reasonable rates for a reasonable distance. We hardly think they are fair when you get a little way west of Pocatello, but up to Pocatello and in that country we think that the rates are very fair. Q. How far does that take you? A. It takes us up into that Idaho country there. Q. 250 miles? A. It is about 250 miles, around there."

Salt Lake jobbers consider O. S. L. rates fair and reasonable for reasonable distance.

Since 1906 the U. P., after the consolidation, published a tariff from Missouri River, and east into that point (Huntington), which made the rates practically common with Salt Lake. (2491) In order for the Salt Lake jobber to get into that territory, he had practically to absorb the local. Witness' competitor there is Missouri River, Denver and Chicago. The tariff referred to put the Salt Lake jobber on the Montana basis, that is to say, he was given the same rates as the Montana people had. "Q. And that resulted in a reduction, didn't it? A. It resulted in a reduction from the east, but it also resulted in a reduction to all this intermediate territory that we were doing business in. MR. SEVERANCE. That is, into that intermediate territory from the east? WITNESS. Yes." The

conversation with Eccles about the salt for sheep was at least ten years ago, probably more.

39 cent differential favor water and rail line.

(2492) Witness didn't mean the O. S. L. was buying and supplying the salt. "Our customers complained it was being distributed through the agents of the Oregon Short Line." There is a 39 cent differential in favor of the water and rail lines to Utah. It used to be 42 cents (first-class rate). (2493) Of the total 16,000 tons of traffic handled by witness, he should say probably a third is from the Atlantic seaboard, but couldn't state positively. In recent years, witness has used the Kanawha Despatch and the Missouri Pacific out of St. Louis. Prior to that he used the Mallory and Morgan lines largely by Galveston. Took up the use of the Kanawha Despatch about a year ago, because the service was bad around by the Gulf ports. Prior to that had been using the Gulf lines since about 1892 or 1893. At first, it moved via New Orleans, thence over the S. P. connection, Texas and Houston Central, by way of Denver. Never used the I. C. route via Chicago. None of it came through Kansas City.

Routes used by witness.

(2494) Also used the route at one time via the Mallory Line to Galveston, M. K. & T. to Junction City, and the U. P. to Salt Lake. Didn't use that route a great deal. That was during the railroad rate war days in the late 90's. From Denver witness used both the U. P. and the D. & R. G., but used the latter more. During the last year witness has moved Kanawha Despatch, C. & O., Missouri Pacific at St. Louis, D. & R. G. and Colorado Midland at Denver and Colorado Springs. Hasn't been using the U. P. during the last year. (2495) When this new route was adopted witness had a through car put on from Newport News to Salt Lake, called the Salt Lake car. Thinks that car comes into Salt Lake tri-weekly. On business all-rail from the Atlantic seaboard, witness usually used the Merchants' Despatch, the Chicago & N. W. and U. P.; occasionally Burlington out of Chicago. Witness' business on the east is solicited by other lines than the D. & R. G. and the U. P.—the Rock Island, the Burlington, C. & N. W., M. & St. P., and some of the eastern lines, the Pa., B. & O., the New York Central; all the lines located east of the Rockies.

Competition between S. P. and Rio Grande.

(2496) Prior to 1901, there was competition between the Southern Pacific and the Rio Grande on business that came into Utah via the Gulf ports. Witness thinks the natural ally of the Rio Grande at that time was the Mallory Line and the Santa Fe, and when they secured business, witness does not think they gave any of it to the Morgan Line. "They were in that respect competitors. Q. Wasn't the Southern Pacific in this position, then, just like every other eastern line—it was trying to get the business, and whenever it could get it, it would send it any way you wanted it, over either the Union Pacific or the Denver & Rio Grande? A. Yes, sir." That is the kind of competition the witness referred to between the U. P. and S. P. If the S. P. got the business, it got a haul by boat to New Orleans or Galveston, and then a haul as far

as some junction point in Texas, and its connections handled it beyond that. If the U. P. got it, their haul was from Denver. If the U. P. secured it from the M. K. & T., the haul was from Junction City, Kansas; if from the Kanawha Despatch, from the Missouri River gateways.

(2497) Witness couldn't state the divisions. The U. P.'s preferential water and rail route was the Kanawha Despatch. Witness' impression is at that time (prior to 1901), the Southern Pacific's preferential line west of Denver was the Rio Grande. (2498) The freight service of the U. P. from the Missouri River, in the matter of time, as compared with ten years ago, is not as good. Witness hasn't shipped his seaboard business that way during the last year, but has divided his middle west business. (2499) Witness' attention called to Chapter 1 of the Laws of 1897 of Utah. That Act was passed long before his conversation with Mr. Pierce, about which he has testified.

Prior to 1901, S. P.'s preferential route west of Denver was D. & R. G

(2499) JOSEPH A. WEST.

West.

Resides at Ogden, Utah. For forty years a civil engineer engaged mostly in building western railroads. (2500) Remembers making surveys southwest from Salt Lake about 1881. Made that survey for what was then known as the Utah Southern Railway Company—Salt Lake & Western, it was called. The survey went a long distance to the north of what was called the Meadow Valley Wash. It was made with reference to a route to be used for a through line to Los Angeles. It didn't reach what is now the line of the San Pedro road, at all, but went parallel with it 100 miles or so to the north. Made a subsequent survey in connection with Mr. J. Pearson Smith. The latter had charge of the line from Milford west, and witness went to Barstow and ran some lines through Death Valley, eastward from there. Mr. Smith's and witness' surveys met at Freiburg Pass, the point to which witness had run a line ten years before. That last survey was made in 1888, for the Utah Southern Railway Company. The Sharps were in charge of it.

Ogden. Civil Engineer.

Various railroad surveys in Utah and Nevada.

(2501) That survey ran north of the Meadow Valley Wash. It was a feasible line. The Utah & Pacific ran from Milford to Uvada, and witness surveyed that line for the Company, and became superintendent of it after it was built. Had charge of operation of the line until the Spring of 1900. Doesn't remember who had charge of the line from then on until Mr. Eccles sold it to the Short Line. At the time witness made his survey, to his knowledge, no survey had been made through the Meadow Valley Wash. At the time witness commenced the construction of the Utah & Pacific, portions of the grade were in very good condition. (2502) There were some places where the grade had not been connected up, and it required considerable work to repair it, and put it in proper condition for the rails.

(2503) Witness made three surveys, one in 1880 or 1881, another in 1888, and then the survey of the Eccles work in 1898. The first was made for the Salt Lake & Western, which didn't at the time own a railroad. The name was subsequently changed to Utah & Southern, and it afterwards became merged into the Oregon Short Line and Utah Northern. The survey in 1888 was made from Boulder Pass, a point on the north boundary of the Tintic Valley, 100 miles from Salt Lake City, and went westward into Central Nevada. Witness' instructions were to go through to California, but before completing the survey he was called back.

Various railroad surveys in Utah and Nevada.

(2504) The survey was about 250 or 300 miles in length. No railroad was ever built on that survey, except down through the Valley, where it followed it for a few miles, and then took up the line on the left. Ran several lines from Barstow, one down by what is called Owl Springs, and down into Death Valley, and a preferable one from Daggett eastward into Death Valley, farther south than the other line. No road was ever built, and no right of way maps ever filed to secure the right of way over those surveys. A line was built up to Amargosa from Daggett, on line surveyed by witness, into the mines up there, by another company. (2505) About 150 miles in length. It is the Burke-Smith road, and runs up through Bullfrog and Rhyolite to Goldfield. The distance from Barstow to Salt Lake by witness' line would be 800 or 900 miles in length, witness thought; nearer 900 miles. From Barstow to Los Angeles is 141 to 145 miles. The third survey, in 1898, was along a line already laid out. Witness didn't change that line. Only did the surveying for the purpose of filing maps in the general land office. (2506) Caliente is in this end of the Meadow Valley Wash. It would be feasible to build a road over the existing line and connect with the line that Mr. Smith surveyed from Milford at a point north of Pioche. The connection would probably be 400 or 500 miles from Salt Lake. To bear off to the north, and go over witness' survey and avoid the Wash, would make the route 150 miles longer. By the other route, which was surveyed from the summit of the Escalante range, going north of Pioche, the difference would be about 100 miles.

Kerr.

(2507) KENNETH KERR.

Salt Lake. Former railroad editor of Tribune.

Lives at Salt Lake City. For four months district passenger agent of the San Pedro at Salt Lake City. Previously commercial agent at Riverside, and prior to that traveling passenger agent. Employed by San Pedro since May 1, 1905. Previously a newspaper man in Salt Lake. (2508) Witness is railroad editor of the Salt Lake Tribune. Took latter position November 13, 1892. (2510-2512) Complainant's Exhibit 155, an article in Salt Lake Tribune of September 17, 1900, entitled "Gibbon has arrived—Vice-President of the Los Angeles Terminal gives details of the Salt Lake road, which is surely to be built, and at once." (2513-2514) Complainant's Exhibit 156, article from Salt Lake Tribune, September

19, 1900, entitled "R. C. Kerens arrives." (2515-2516) Complainant's Exhibit 157, article from Salt Lake Tribune, September 27, 1900, entitled "Confirmed by Clark." (2517-2520) Complainant's Exhibit 158, article from Salt Lake Tribune, October 3, 1900, entitled "Construction will be pushed."

(2522) GEORGE N. LAWRENCE.

Lawrence.

Salt Lake. Member Utah Senate.

Lives in Salt Lake City. An attorney at law. In 1901 a member of the Utah Senate, and Chairman of the Committee on County and Municipal Corporations. Witness recalls the introduction into the Legislature of the act which finally passed as amended, with the proviso, as chapter 49 of the laws of Utah for that year—1901.

San Pedro legislation.

"Q. State the circumstances under which that bill was introduced and the form in which it was introduced, if you know. A. The measure was originally introduced in the house and passed the house in the form in which the present measure is, down to the (2523) proviso, and came to the senate and was referred to the committee on railroads, and came out of that committee with a favorable report the day or second day following. I asked for recommitment to the committee on county and municipal corporations, as it was affecting municipalities, and it was recommitted to that committee, where the amendment was made." Arguments on the bill were made before witness' committee by Mr. T. E. Gibbon of Los Angeles, and others.

Mr. Gibbon said they were anxious to secure the passage of that measure, so they could get terminal facilities at Salt Lake; that some objection had been raised to a title that the council might give, and that he thought the citizens ought to co-operate in promoting the road, as it meant an independent line to California, in competition with the S. P. His arguments all were that it was an independent road, and meant a great deal for the City of Salt Lake and the people of Utah. (2524-2525) Several railroad statutes referred to as passed at the instance of the O. S. L. and U. P. Companies. The Pioneer block is still a public park. After the amendment in witness' Committee, the plan to use it as a terminal was practically abandoned.

(2525) JOSEPH OGLESBY.

Oglesby.

Salt Lake. Formerly connected with U. P. and Rock Island in traffic dept.

Since 1887 a resident of Salt Lake City. Prior to coming to Salt Lake employed by the O. V. Line—part of the Big Four now —at Indianapolis; also was with the Indianapolis & St. Louis at St. Louis. That is a part of the Big Four, too. With the Vandalia, with the L. & N. at Louisville; with the Kansas City, Fort Scott & Memphis at Kansas City; and from there witness came to Salt Lake with the O. S. L. (2526) In 1888 witness went with the Rock Island, and remained with them until July, 1907. Was with the U. P. from November, 1887, to July, 1888. While with the Union Pacific, witness didn't attempt to work the boat line from Portland to San Francisco, though he knew it existed. Witness

U. P. did not work Portland route.

didn't attempt to work San Francisco business from Salt Lake via Portland. That moved by the Central Pacific. The Southern Pacific had a separate agency in Salt Lake at the time witness came there. At that time the Union Pacific and Southern Pacific were both working for Atlantic seaboard business.

(2527) If the Rock Island secured business, they brought it to Pueblo and gave it to the D. & R. G., or took it to Denver and delivered it to the U. P. Witness worked with the Kanawha Despatch, the Mallory and the Morgan Lines. Worked both the gulf routes and the line by St. Louis or Chicago or Kansas City. Remembers the fast freight service that was on the U. P. before the merger. It lasted six or seven, or possibly eight months. The competition for wool shipments to the east from this region was very active. "Q. How did the Southern Pacific endeavor to move the wool that they could secure? A. The bulk of the wool on the line of our road moved by Sacramento, the Sunset Route and the Morgan Line." The U. P. took it straight east, and delivered it to its friendly connections, who had secured the wool by their own personal solicitation. (2528) Witness' interest was opposed to the Southern Pacific because the latter took it the other way. A good many methods were adopted to secure these wool shipments. "The principal one was that we were able to furnish a man to assist the wool buyer in this way: He would notify me at my office and say, 'I have some wool. If you can send a man to receive it, mark it, weigh it and load it, you can have it over your line.' I would send the man there. That was one of the methods. And there were other methods." The roads endeavored to get the sheep driven to their line, in order to get the business. There was considerable wool in this competitive territory where those methods were adopted. The Southern Pacific did not attempt to move cattle and sheep to the west. They cared only for the wool. The S. P. competed for the wool originating in territory north of its line and south of the O. S. L., the territory extending out possibly 125 miles.

Wool traffic.

(2529) Corinne is on the old line of the Central Pacific that runs north around Salt Lake. The traffic which the S. P. sought from the Atlantic seaboard was competed for by practically all the lines lying east and southeast from this territory, the Rock Island, the Burlington, the C. & M., the St. Paul, the Missouri Pacific, the lines east of the Missouri River and of the Mississippi River, east of Chicago, such as the New York Central and the Pennsylvania. All the lines leading direct to the Gulf and the lower Atlantic ports were trying to get it. (2530) Very little of this traffic came by way of Mobile. The principal gulf ports were New Orleans and Galveston. The S. P. would work the business into Salt Lake over the D. & R. G. or over the U. P. It would depend very largely on how large the shipper was, and how much influence he exerted. If he was a heavy shipper, he could dictate his own routing. There

Seaboard business.

were a good many other agents in Salt Lake, besides witness, and the S. P. agent and the agents of all those roads were trying to get a share of the haul.

(2530) FRED. D. ULMER.

Ulmer.

Salt Lake. Civil Engineer

A civil engineer residing at Salt Lake. From March, 1901, to March, 1902, was employed on the survey of the San Pedro road. (2531) Began work at Uvada, and went southwest toward Caliente for about 215 miles. At start saw nothing of surveying parties or other employes of the O. S. L. Later in the summer of 1901 saw a party at Kirnan's, and in November another party at same point. One party stopped over night going south. Another party was on what they called a joint survey. The joint survey, as witness understood it, was under a court order instructing the two lines to go through the contested points of the Meadow Valley Wash at 20.2 feet distance apart. Witness participated in it. This joint survey was made, witness thought, about the first of December, 1901. Witness was not present at any of the scraps between the contending parties. Up to the time he left the employ of the San Pedro road, the Short Line surveyors were still at work on the California end of the line, separate from his force.

Survey of San Pedro road.

(2532) As witness surveyed southwesterly from Uvada, he adopted almost absolutely the old line of railroad that existed on the ground. The only variation from the original line was of trifling importance, simply a question of distances. It was practically an adoption of the pre-established grade. He found a considerable amount of roadbed already in fair condition, some heavy embankments, and some very heavy cuts. (2533) Found tunnels that were timbered and lined. The old grade continued down to what is known as Clover Valley Junction, now Caliente. From there toward Pioche witness followed the old grade substantially. There were no tunnels; just cuts and fills, and some unfinished work. The greater part of the grade from Caliente to Pioche was unfinished. It existed in sections here and there. Witness had with him a copy of the blue print of the old surveys made ten years before by the O. S. L. (2534) Witness doesn't remember graded work southwest from Caliente. For the first fifteen miles out of Caliente, didn't follow the old survey, but then picked it up and followed it more or less, making revisions, the entire way to the California and Nevada line.

Practically adopted the old grade.

Found tunnels, heavy cuts, and roadbed in fair condition.

Had copy of old survey.

(2536) Witness' understanding of the court order was, in brief, that two separate rights of way of full width were to be located where they could, and in coming together where by the condition of the ground they were driven together, a line for each company was to be located with centers not nearer than 20.2 feet. (2537) The joint survey covered about 125 miles.

Court order as to joint survey.

SALT LAKE CITY, THURSDAY, APRIL 29, 1909, 10:30 A M.

Summerhays.

(2537) JOSEPH W. SUMMERHAYS.

Forestdale, Utah. Hides, wool, &c.

Resides at Forestdale, and his business is hides, wool, furs, plaster hair, etc. His principal market is in the eastern states. (2538) Handles 45,000,000 (?) pounds of hides and wool a year, in and out. Has been in business at Salt Lake since 1883. Has bought wool all over this inter-mountain country, Nevada, Idaho, Wyoming, and some—very little—in Montana. Before the merger his business was separately solicited by the U. P. and S. P. If the business was far enough west, ordinarily the S. P. would move it around by California, but witness understood that when the business was around Kelton and Terrace and Corinne, through that section of the country, they would bill the stuff west, and rebill it east without moving the car. They would get the advantage that way of the long haul, instead of the short haul, but they would send it east over the U. P. "Up to the time that the O. S. L. was built, all the wools in western Utah and Nevada along the S. P. were loaded there. We used to load wool principally in western Utah from Terrace, Tecoma, and Kelton, and after the Short Line was built there was an effort made to run the sheep over the Short Line to Kimama and Minidoka, and that got to be quite a shipping point."

Routing of wool traffic.

Hide shipments.

(2539) Hides were consolidated in Salt Lake, and then shipped east, putting 20,000 pounds in a 36 foot car. There were several ways of shipping hides. Witness had known some cars to go to San Francisco and be billed back, because the rate was less. Sometimes went east direct over the U. P. Didn't know whether any of it ever went over the Morgan Line, or not. Witness buys his plaster hair at Venecia, Cal. Formerly had commodity rates from Montana points to Salt Lake on hides, so he could assemble them at Salt Lake, but those rates are not in effect now. There are commodity rates from Montana to Los Angeles by the San Pedro. Witness' best recollection is that it is $2 on hides. (2540) Hence, Salt Lake now no longer gets any of the Montana hides. Going from Montana common points to Los Angeles at $2, and then the rate on to the Atlantic seaboard is $1.20. This gives the shippers two markets, the California and the eastern market. From Salt Lake to Los Angeles the rate is $1.20, L. C. L. Hides have to be baled going east, but not going over the San Pedro to Los Angeles. On wool originating on the Short Line there are no divisions between the O. S. L. and the D. & R. G., so that the traffic moves east over the U. P. Witness has no occasion to ship from points on the O. S. L. to points on the D. & R. G., and is not particularly inconvenienced by the fact that there is no rate that way.

Rates from Montana to Los Angeles.

Didn't know that no hides had ever moved from Montana to Los Angeles on the $2 commodity rate. (2541) Had no information on that subject. Only knew there had been an effort to get the business, but not whether any was secured. In the old days the hides shipped via the S. P. out of Salt Lake moved over the

O. S. L. to Ogden, and then over the S. P. Doesn't know whether they ever went by the Sunset route. Shortly after the merger, the rate on hides went up. Witness' recollection is that the rate from Salt Lake to the seaboard was $2.30. He found he could ship to San Francisco and pay the drayage there for about 97 cents, and ship thence to New York by water for 70 cents. He laid those facts before the railroad people, and they reduced the rate, making it the through rate from California, plus the rate from Salt Lake to California. This remained in effect until very recently. (2542) Witness' recollection was that the combination rate was $1.94, and was lately raised to $1.96. He is referring to dry hides. It would be inadvisable to ship green hides that way. They would spoil in transit. The basis of the rate from Utah to the east has always been the through rate from San Francisco, plus the rate from Salt Lake to San Francisco. Rates on hides.

(2543) In the past the railroads would give him any old kind of a rate. He could to-day ship wool from Modena to Boston in boxes for $2.38, and can ship the same stuff 80 miles nearer for $2.13. He can also ship hides to Los Angeles for 80 cents, bale it for 15 cents and ship it back for $1.10. The inconvenience is that he is out the time, but he saves $50 or $60 a car. (2544) "Now, if I am at Modena I ship my stuff to Los Angeles or to a certain place down there, and I ship it there for 80 cents a hundred, which is $160. It costs me $30 to bale it. Then I ship it back on a $1.10 rate, which is $220, making a total of $410, and I save $60 a car." The wool is carried to Los Angeles to be compressed. The railroad's agent did that for shippers. Witness hasn't personally shipped to Los Angeles. (2545) His competitors are doing it, and he can do it. Witness thinks the increase on hides just after the merger was from $1.94 to $2.30 or $2.36. Things tightened down after the merger. Witness meant by that, there had been little solicitation. The U. P. agent had been in witness' office twice this year, but not soliciting business at all. The Great Northern (Chicago & Great Western, see p. 2547) agent has been in a time or two. Formerly they would come in every day or so. All kinds of rates in the past. Change in solicitation.

(2546) Witness thought this change in solicitation occurred in 1901, not in 1906. The $1.20 rate to Los Angeles from Salt Lake cost witness 17 carloads of hides last year. The hide men appointed Mr. Runyon and witness a committee, and they waited on the Short Line officials, who, witness is satisfied, did everything they could to restore the $1.54 rate to Los Angeles. (2547) Witness thinks that the rate from Salt Lake to Los Angeles or San Francisco, less than carload lots, should be 75 per cent. of the rate from Salt Lake to the Missouri River, which would make the rate $1.54, instead of $1.20.

(2548) Witness finds it advantageous, instead of scattering his business, to give it to one man and let him look after it, and the agent of the Chicago Great Western has given him very good service. Things have gotten into a groove. Witness does his bus-

iness over the U. P., and, for instance, the Utah Live Stock Company, which is on the D. & R. G., do business over that line. Recently there has been more aggressive competition between those two roads. "Wherever there is a pool, why, you have got to put up with whatever they pool." Witness tried to take his business down to Pueblo, and thence over the Atchison, but the latter's agent said he couldn't take it. (2549) Witness thought the tightening up occurred, not in 1901, but a little later, when the U. P. and S. P. agencies were consolidated. Whatever the rate to the seaboard is over the U. P., it is always the same over the D. & R. G., so the rate was not made by the U. P. and S. P. alone. It was also made by the D. & R. G. Witness doesn't think the merger was to blame. Thinks "the whole push needs renovating, if you will permit that expression."

Attributes changed conditions to merger.

(2550) Witness attributed the changed condition to the merger. The D. & R. G., so far as westbound business is concerned, never had much to say about it, except to acquiesce in whatever pool was made. The bulk of witness' business, however, goes east. 85 per cent. goes east. None of this 85 per cent. goes by way of San Francisco to the east. (2551) Witness ships entirely by the U. P. The U. P. and O. S. L. can give as good, in fact, better service than the D. & R. G., and when witness orders a car he gets it immediately from the Short Line, but it takes four or five days to get it from the D. & R. G. In answer to question that there is no reason why the D. & R. G., with its connections, shouldn't make any rate it sees proper to the east, witness said: "There must be some reason, because they don't do it." (2552) Witness has to wait for a car over the D. & R. G., because he is located on the tracks of the O. S. L., and the former road takes a car out to the Salt Lake Transfer, and the latter apparently leave it there; delay in switching it.

For past few years solicitors of eastern lines have not darkened his door.

(2553) For the last three or four years, or may be five or six years, solicitors of the eastern lines have never darkened witness' doors. (2554) Doesn't remember seeing the solicitors of the connections of the D. & R. G. at Denver and Pueblo, such lines as the Rock Island and the Missouri Pacific. In shipping wool from the main line points of the Union Pacific and points on the O. S. L., witness couldn't get his bills of lading. For instance, the local agent at Evanston said he would have to telegraph to Salt Lake for the routing, and at another time, for example, witness got his bills of lading at Salt Lake for stuff that he had shipped from Fossil. Witness understood that the routing was made over the line from which the car came. For instance, if it was a Chicago & Northwestern car, over that route. Similarly with the Rock Island and Burlington. The cessation of solicitation apparently arose from a general understanding that each road would get its share. The most active man out here that witness knew was Mr. Curtice, of the Nickle Plate.

Difficulty in getting bills of lading at certain points.

(2555) Prior to 1901 shippers could get anything they wanted, and send wool any way they wanted. Witness has seen rates down

to less than $1.50 a hundred. Since 1901 he has shipped some wool rail and lake at the reduced rate, which is five cents off, and when the bill of lading came back, it would show the shipment had gone all-rail, and witness has put in his claim, as per contract, and been granted the amount claimed. Witness thought the merger had had far-reaching consequences, affecting the D. & R. G., the Burlington, Missouri Pacific, and all the lines. They all, gradually following out this process of "evolution," retired from the field. Witness' testimony about shipments from Corinne, Kelton and Terrace being billed to San Francisco and then again east, applied only to wool. (2556) He doesn't know, but thinks the car was billed that way, but was not actually taken to San Francisco. That was along in the 80's. The wool witness has bought lately has gone direct from point of origin to Ogden, and thence over the U. P. Conditions prior to 1901.

(2557) That is the wool which witness referred to as in competition between the U. P. and S. P. That was the only wool in competition between them, so far as witness knew. The hides were assembled at Salt Lake and baled and shipped east, either over the U. P., or, if the cars could be obtained, over the D. & R. G.; or, if witness shipped the hides to Portland, they would go over the Short Line and Navigation Company. He has shipped hides to Portland. Hides assembled at Salt Lake.

(2558) The conversation witness testified to with Mr. Warren, of the Atchison, was an inquiry as to whether he could not make the same rate to San Francisco around by the D. & R. G., that he got over the O. S. L. and S. P. The route witness had in mind was by the D. & R. G., and then down south to a connection with the Santa Fe. West-bound business from Utah common points takes 75 per cent. of the Missouri River rate.

(2559) It would not straighten the matter out, to reduce the rate from the Missouri River to Utah common points so as to make it one and one-third times the $1.20 rate to Los Angeles, because, as Mr. Plaisted of the U. P. had remarked to witness, it would do no good for the U. P. to reduce the Missouri River rate, because the San Pedro people would reduce their rate. Witness thought the argument unanswerable. (2560) Witness thought the San Pedro people had perpetrated a bit of sharp business on the other lines. The San Pedro said: "Why, the rate on green hides is $1.17. On dry hides is $2.54. Green hides weigh heavier. Now, let's give them a blanket rate of $1.20." As a matter of fact, there are no green hides, because they cannot ship them less than carload, but by this arrangement the San Pedro got 35 cents off their dry hides. The hides that go to Los Angeles are not all shipped east. The men that do business in Los Angeles have two markets, the California market and the eastern market. That is the disadvantage the witness is at. The hides may be shipped from Los Angeles either over the U. P., the S. P., or the Atchison. Sharp business of the San Pedro.

(2561) The rate from Salt Lake has been 75 per cent. of the Missouri River rate as long as witness can remember. He has been in business nearly thirty years and cannot remember how long, but Salt Lake rates.

that has been the basis. "Whatever the Missouri River rate was, why, 75 per cent. of that would be the rate—except when we would get a cut." (2562) The rate from Salt Lake to Boston on wool is $2.13. The $1.20 rate to Los Angeles has nothing to do with wool. It applies only to hides. There is no similar rate on wool from Salt Lake, but down the line there is. The wool rate from points south of Tooele is 80 cents to Los Angeles, 15 cents to bale, and $1.10 back to Boston, a total of $2.05. The $2.13 rate from Salt Lake direct to Boston applies to bagged wool. The rate on wool from Los Angeles applies to baled wool, which takes a lower rate. (2563) Witness doesn't think there is any rate on baled wool from Salt Lake to Boston. It is all shipped from Salt Lake in bags.

Kearns.

(2564) THOMAS KEARNS.

Salt Lake. Promoter of San Pedro road.

Has lived in Salt Lake City twelve years. Was interested in the San Pedro road with Senator Clark and his associates. (2565) When the road was projected by Senator Clark and his associates, it was his intention to build it as an independent line. Witness negotiated for the purchase with some people in Salt Lake, for the profiles of the road that had been run before by them, and was subsequently authorized to purchase those maps and profiles. They began at Salt Lake City and ran southwesterly toward Los Angeles. Engineers were immediately put to work to run a profile through.

Genesis of San Pedro road.

(2566) Witness thought the engineers began work at Los Angeles first. Sometime afterwards witness learned that the O. S. L. had concluded to build a line of road to Los Angeles. Witness couldn't say whether the O. S. L. up to that time had made any move to build a line to Los Angeles. Witness' line hadn't conflicted with them at that time. Witness couldn't say whether the Oregon Short Line was working in the field at that time. Doesn't know anything about that. If they had any such intention, he didn't know of it. Witness' predecessors owned a small line from San Pedro Harbor into Los Angeles, which was amalgamated into this system, and they built from there to some point in near Vegas, and afterwards started construction jointly from this end; he thought down from Caliente to where they joined. Witness' company before the O. S. L. joined hands, was building a line from Riverside to Los Angeles. (2567) Previous to the amalgamation of San Pedro interests, witness had run a survey across the desert. Witness once went down to Caliente, which was then the end of the rails, and at that time both the O. S. L. and the San Pedro people had gangs of men at work there building a railroad. Considerable grading had been done by each.

Conflict with O. S. L.

(2568) The two gangs continued at work there until after the decision of the court in Nevada, and the ruling of the Interior Department in regard to the right of way. The Land Office's

Negotiations for settlement.

decision was adverse to witness' interests. Witness was present on one occasion when the negotiations were under way for a settle-

ment of their difficulties. The negotiations that culminated in the contract between Senator Clark and Mr. Harriman extended over a number of months.

"When the first negotiations were opened, I approached Mr. Clark myself to urge him to make those terms after the decision of the Department was against us and we didn't have that right-of-way; and of course then there were many conferences between the owners and their attorneys on different occasions and at different places. (2569) Q. What was Senator Clark's attitude when you approached him and urged him to make the deal? A. He was not at all anxious at that time. * * * He said he wanted to go along a while yet. I told him that he had a good deal more money than his associates, or at least I thought he had, and there was no room in there for two roads, and from a financial standpoint I would like to see one successful road, and I urged him to open negotiations through his solicitors, to see what terms could be made. We were in that box canyon and there was no way out of it except by an air-ship. This other line was some two hundred miles longer—it was not practicable. From a financial standpoint it didn't appear to me that there was anything left to be done, only to put one—— Q. You felt satisfied, did you, that if two lines were built through to Los Angeles, they could not be financially successful? A. I didn't care to put any more of my finances into it—my small pile." Witness knew that two lines paralleling each other to Los Angeles could not be a success financially. There was not a lot of track that was taken into that deal from the Short Line, which was not necessary or even desirable to the San Pedro road for the purpose for which it was organized. Witness wanted to take in a little more.

No room for two roads.

No more of his finances in it.

(2570) He would have liked to take in from Sandy into Salt Lake City, and part of the switches into the main depot here, which he understood the O. S. L. controlled. He felt it was a good thing for the San Pedro to acquire all the track that it did acquire from the Southern Utah, "and a little more; everything south of Salt Lake City." The road that was taken over was not a first-class road, but was "a fair western road." A lot of it was rebuilt, and some of the grades need rebuilding yet. Heavier rails were put down. The road was strengthened and the fills widened. Witness' projected line to Los Angeles was that of a first-class road. They finally built a high-class road. At least, they thought they did.

Finally built a first-class road.

(2571) The contract between Mr. Harriman and Senator Clark was prepared by Mr. Gibbon and others. The profiles for which witness negotiated were made for the Utah & California Railroad Company. It was a company organized to construct a railroad upon the old O. S. L. grade from Milford westward. The maps and profiles which witness secured extended westerly from about the state line, through and into Nevada as far as what was then known as Clover Valley Junction, and covered a partially completed grade extending from there up towards Pioche. The maps

Secured profiles and maps of old Utah and California road.

and profiles for which witness negotiated relate to that old line built by the Short Line, as far as it was built, about 1890, and embraced the tunnels and cuts and fills down to what is now known as Caliente.

(2572) The purpose was to examine that line, and if it was approved, to secure it and build on it. One of the lines of survey ran direct to the upper end of Meadow Valley Wash and down by Pioche to or near Clover Valley Junction. The line actually constructed by the San Pedro Company is shorter than that line. On the other line the grades were higher and the distance longer; heavy construction work. (2573) Witness' company was advised that, as a matter of law, his company could adopt the surveys of the Utah & California Company, and could appropriate that line to the purposes of the new company. The right of way and privilege to run through between Uvada and Caliente were regarded by witness as of substantial value. The attempt to secure that old right of way resulted in a controversy with the O. S. L. In April, 1901, the Department of the Interior decided in favor of the O. S. L. At the time of the decision, the O. S. L. were constructing a railroad from Uvada toward Caliente on the old grade. At the time of the decisions, the relation of the men on the ground had become strained.

Was advised they could appropriate old grade.

Dept. of Interior decided in favor of O. S. L.

(2574) Thereupon, the matter was taken into court. At the time witness went down to the end of the line, he went on an O. S. L. train to the end of the track at Caliente. Witness' company had made a preliminary survey of a line extending from Caliente up towards Pioche, and from there to Salt Lake. That is the line he speaks of as the longer line. It connected with witness' projected line extending across Nevada from Caliente. The San Pedro Company was not in existence at the time witness negotiated for the maps, profiles and surveys. It was not incorporated until after March 21, 1901. Witness couldn't fix the date. (2575) The Los Angeles Terminal Railroad Company extended from San Pedro on the bay, through Long Beach, up to Los Angeles, with a line extending out to Pasadena, and a branch line extending from that line up through Glendale to Verdugo. It has not commenced the construction of a line from Los Angeles towards Riverside until about the time of the incorporation of the San Pedro Company. The purpose of the owners of the Terminal Company was to organize the San Pedro, and afterwards secure right of way and construct a line, but that California construction had not commenced until about the end of March or first of April, 1901. The decision in favor of the O. S. L. had considerable influence on witness and his associates. "Q. Will you just state why the loss of that line influenced you to take the steps which you say you took with Senator Clark? A. Well, we considered it was the only practicable line out of the canyon. We were led to believe, through our solicitors and other influences, that of course we could get possession of that right-of-way, and the decision rendered prospective two lines being

Los Angeles Terminal Co.

built. I had considerable money for a man of my means invested in it, and I knew the only thing to do was to consolidate and build one line. * * * Q. You felt that two lines through there would be not only expensive to construct but also to maintain and operate? A. Well, I didn't want it with my money. Q. Thereupon you began considering with your associates, including Senator Clark, the expediency of making some sort of an arrangement by which one line should go through there? A. Yes, sir."

The only thing to do was to consolidate and build one line.

(2576) At the time of the controversy, witness had become satisfied that the O. S. L. intended to build its line through. It already had a line 326 miles clear to Caliente on the way to Los Angeles, and witness was satisfied they intended to build the remaining 580 or 590 miles. Doesn't think anybody on either side was anxious to build two lines through the canyon. The canyon extended about 125 miles southwesterly from Caliente. (2577) As to what lines could be put through there, witness could not state, but he didn't think more than one would pay the fixed charges.

Witness was satisfied the O. S. L. intended to build its line through.

(2577) JOSEPH OGLESBY—Recalled.

Oglesby.

The fast freight trains of the U. P. from Council Bluffs to Ogden ran about eight months. That was about 1897. His understanding is that it was a 54 hour train. (2578) He had no recollection of a 32 hour freight train. Before that eight months period, the fast freight trains took about 75 or 80 hours. Witness has been out of the business two years and then the trains didn't take as much as 100 hours.

(2579) CHARLES D. MOORE.

Moore.

A civil engineer, for seventeen years residing in Salt Lake. Locating engineer of the San Pedro road. (2580) He first began work for the San Pedro at the state line, and worked south through Meadow Valley Wash. Began at Uvada and worked through the canyons, Meadow Valley Wash, and toward the California state line. Then returned to Salt Lake, and conducted a series of surveys from there to Modena and the state line. Those surveys connected up with the survey from Uvada down practically to Modena. Modena is 276 miles from Salt Lake. A portion of the way there was only one line. Farther on there were two or three experimental lines. Doesn't think any line was ever adopted from Salt Lake. Finished the surveys from Salt Lake to Modena the latter part of 1901. There were also surveying parties in the field, working this way from California when witness went on the road in 1901.

Salt Lake. Civil Engineer.

Surveyed San Pedro road.

(2581) They connected with the surveys made by witness, so that a line was surveyed through and the survey finished in the winter or spring of 1902. Witness located some of the line on right of way that Senator Clark had bought at tax sale. There had been some grading where that was located, from Uvada to Caliente.

through what is known as Clover Valley Wash. There had not been any track laid on that portion of the grade. Track had been laid from Milford down very near Uvada, and a little past there. The construction parties of the O. S. L. were at work below Uvada very soon after witness got there. The grading outfits of the Clark and O. S. L. people arrived there about together. (2582) The O. S. L. were pushing their track forward, and witness was doing what he could to prevent their coming on and was gradually falling back until the track reached Caliente. Witness' graders were working farther down on new work. It was merely a question of resisting this invasion on the upper end. Barricades were put in, tunnels and wire fences erected, and they were taken down and the track moved on. There was some gun play, but no one was hurt. Witness didn't think it was intended to hurt. Both parties were mixed up in it. The sheriffs of the two states were at Uvada, and witness also thought the county attorneys. The trouble lasted a couple of months. Joseph Young was in command of the O. S. L. forces.

Controversy between O. S. L. and San Pedro forces.

(2583) Witness' work was mostly ahead of all this trouble, projecting new lines down the Meadow Valley Wash. He had one party on the Pioche Branch and two parties farther down the canyon. A truce was arranged, and witness received instructions to go on jointly and locate a line under conditions fixed in an order from Carson City. The old surveys crossed and re-crossed a good many times, but the joint survey was at no point nearer than twenty feet from center to center, and didn't cross. There had been independent surveys made, which had crossed each other about 26 times. The two lines under the joint survey were feasible, but very expensive. The single line finally located did not follow in whole either one of these two routes. "Q. Did it follow any original survey that had been made? A. It followed the original survey in a general way, but there were points where a double track necessitated very heavy work which we corrected to reduce that work as over the joint survey." The Meadow Valley Wash is 110 miles long. Witness relocated some portions of the lines that were taken over from the O. S. L. Probably about 75 miles, all told, was rebuilt. All those changes were between Salt Lake and Uvada. It is 296 miles between those points. That amount had been relocated at the time witness left the employ of the road. The rails were relaid and the bank widened. The physical condition of the road was very good, but the rails were lighter than those witness was using. 75 pound rails were substituted for 52 pound rails.

Joint survey.

(2585) It was originally ballasted with the natural earth, and reballasted with rock. The maps witness was furnished with when he went to work embraced a line which was already graded, and the cuts and fills and tunnels practically completed down to Caliente. It also embraced a partially completed line of roadbed from Caliente toward Pioche. (2586) Witness picked up the line on the old

There was a completed roadbed to Caliente, and a partially completed one to Pioche.

grades and ran them out. Checked up the work as he termed it. Witness and his men didn't stay out there very long around Uvada, but proceeded to the front. The Short Line people arrived there with the construction material before witness got there. The O. S. L. found some obstructions in their way, several barbed wire fence barricades, and cuts filled with rocks and boulders, etc. Part of these obstructions were removed by witness' people, acting under their attorney's advice, and the rest were pushed out of the way by the O. S. L. people. There wasn't anything very serious happened up there. The obstruction work ceased about the time the injunction was served in Carson. There was a nominal resistance up to that time, and afterwards everything was peaceable.

(2587) The entire Wash is 110 miles long, but it is not quite that far from Caliente. The track, however, between Caliente and Uvada is not in the Meadow Valley Wash, but in the Clover Valley. Witness then surveyed on towards Los Angeles until he met a party coming up from there, something like a year later. The line witness surveyed between here and Modena is about the same distance as the present line, namely, 276 miles. There was a reconnoissance made for a line extending from Salt Lake to Caliente via Pioche, which was 12 miles shorter, but there was a greater rise and fall in grade, but no tunnels; a maximum of one per cent.

(2588) Commenced work on the joint survey about September or October, 1901. It commenced very soon after the injunction. The joint work continued some eight months. The instructions were that where practicable the line should diverge so as to give each company its full right of way under the Act of 1875, but most of the way the lines converged pretty closely. It was a close proposition to get the two lines through at all and take care of the water. Witness hardly thinks it would have been practicable to take care of the water with two lines. Hardly thinks it is practical to carry the water with one line. The whole canyon is a bad proposition. Although he made the joint survey which he pronounced feasible, it was not one which he would care to recommend. Since the O. S. L. took the property over, a change of about 11 miles was made in the line east or northeast of Modena, to avoid some heavy grades and get a better line.

Not practicable to take care of water with two lines. Canyon a bad proposition.

(2589) Then there was another one near Goss. Thinks changes were made to better grades, not to better alignment. That change was about four miles, and another one of six or seven miles at the Severer River. That covers all that was reconstructed, but not all the changes that were made. (2590-2593) Table of stations from Salt Lake to Los Angeles, showing distances.

(2593) WILLIAM W. RITER.

Riter.

President of the Deseret Savings Bank, at Salt Lake City. Built about 13 miles of the road out west that was formerly called the Utah Western. (2594) It ran from Salt Lake to a place called Terminus. It is not in existence now. Also built the Salt Lake &

Salt Lake. Barker. Built certain Utah railroads.

Western, running from Lehigh Junction, 29 miles south of Salt Lake City, to Tintic, a distance of 54 miles. Surveys were commenced in 1880. The road was finally merged into the Oregon Short Line. The other road from Salt Lake to Terminus belonged to the U. P., and they turned it into the O. S. L. on the consolidation of the interests out here, and it was still in the possession of the O. S. L. when witness quit the service. It was a small, narrow gauge road, and its principal value was in its right of way. The San Pedro Company used part of the right of way. The road from Salt Lake to Milford, when witness was on it, was pretty poor. His recollection was that the first 22 miles had been laid with new steel, and the rest of it was rail of different weight. It was not uniform. It was the average rail in those days, but would be considered very light now.

(2595) The grades were easy. Very little cut was necessary. The Salt Lake & Western had an independent organization, but belonged to the U. P. Witness doesn't remember that it was publicly announced by Senator Clark and his associates that they were about to enter upon the construction of what is now the San Pedro. Perhaps he read a newspaper account, but paid no attention to it. Left the railroad service in 1891.

McDonald.

(2595) JAMES G. McDONALD.

Salt Lake. Manufacturer of chocolate.

For 25 years a manufacturer of chocolate in Salt Lake. Raw material comes from South America, via New York. (2596) Has been importing via New York about one year. Previously had bought the finished product from Milton, Mass., which was shipped to Salt Lake all-rail. The last year has been shipping cocoa beans from the east. They move Morgan, Kanawha Despatch, Union Pacific, Missouri Pacific, different lines. Prior to 1901 witness' imports from the east consisted of the finished product, confectionery. He has done a wholesale confectionery business for 25 years. Ships to California, Oregon, Washington and Colorado, all the western states. His business was formerly solicited by both the U. P. and S. P. Rate to San Francisco on manufactured product is $1.61.

Salt Lake rates.

(2597) The rate from San Francisco to Salt Lake on the same product is 90 cents. Rate on raw material from the east, all-rail, is $2.26; water and rail, $2.03. The through rate to the coast is 85 cents. Manufacturers on the coast would, therefore, pay 85 cents for their raw material, and 90 cents on shipping their finished product back to Salt Lake, a total of $1.75, while witness paid $2.03 water and rail to Salt Lake on raw material, and $1.61 more to San Francisco. Gets his pasteboard boxes from Detroit, Chicago, New York, different points. Isn't posted as to rates, but knows these boxes move to San Francisco or Los Angeles, and then back to Salt Lake. They move over the U. P. and O. S. L., and also the San Pedro. From Detroit shipments move through to Los Angeles, and then back to Salt Lake. The reason for that is to obtain a lower rate. (2598) The rates make it impossible for the witness

to reach out. In fact, almost impossible to do business. They can get the raw material to San Francisco, and ship the finished product to Salt Lake for less than witness can get the raw material to Salt Lake, about 54 cents a hundred less. The cocoa that is shipped to San Francisco moves all-rail, as a rule. The chocolate that witness buys in Massachusetts will not stand water, so there is no water competition on that product. Walter Baker always insisted on a release when his goods were shipped by water, as he declined responsibility.

(2599) The finished product which witness purchased from Walter Baker & Co. moved to San Francisco all-rail for $1.25 a hundred. For a number of years witness has been shipping that product to San Francisco and back to Salt Lake, saving $1.05 a hundred. Walter Baker always allowed $1.05 where the goods were consigned to his San Francisco agent. The rate to Salt Lake direct is $2.30. A reduced rate has just been put in of $1.85 on the finished product, but the rate on beans remains the same. The 90 cent rate on chocolates from San Francisco to Utah may have been put in at the request of the Utah Candy Manufacturers—Sweet and others. Witness imagines, however, that it was put in on account of competition here. "Q. What competition? A. The competition of ourselves." The same rate, however, applies to cocoa "and those people don't handle cocoa." (2600) The chocolate supply, witness understood, had not been coming from San Francisco, but from Massachusetts. Salt Lake rates.

(2601) The high rate to Salt Lake, witness understood, is due to the difficulty in reference to the publication of tariffs. It was formerly provided, in effect, that a rate to an interior point should not exceed the through rate to the coast, plus the local back to the interior point. The Interstate Commerce Commission has ruled that rates could not be published that way any more, but that each tariff would have to show just what the rate was. Before the merger, the S. P. tried to get its business into Salt Lake either over the U. P. or the D. & R. G., bringing it by the Morgan Line to New Orleans or Galveston.

(2602) STEPHEN H. LOVE—Recalled. Love.

Complainant's Exhibit 159, Statement showing the rates for 106 miles out of Salt Lake as compared with those 109 miles out of Denver, the former being 39 and the latter 26 cents a hundred. (2603) Complainant's Exhibit 160 shows the rate on a number of commodities in the fourth class out of Salt Lake, as compared with Denver. The table as originally prepared shows on page 2605 that the average rate per ton out of Salt Lake was $16.55 and the average rate per ton out of Denver was $11.00. A pen has been run through these figures and opposite them in red ink appears $13.24 as the average rate per ton out of Salt Lake and $8.80 as the average rate per ton out of Denver. Under these

figures the following statement in red appears. "The figures in red are correct. S. H. Love."

(2606) "Q. I will ask you if Exhibit 160 is a copy of the statement which you said you had prepared sometime ago? A. It is not exactly a copy of the statement, because I do not recall exactly the commodities that I used." The tariffs used in preparing this statement were the regular published tariffs.

"Cross-examination by Mr. LOVETT: Q. In Complainant's Exhibit 160, the last one about which you testified, as I understand you selected various points. What governed in the selection of those points, Mr. Love? A. I tried to get 200 miles out of Salt Lake and 200 miles out of Denver. Q. Did you take on every line the nearest station 200 miles in distance. A. We tried to average up the mileage, so the total mileage would aggregate about 200 miles. Q. My question is whether in dealing with Salt Lake you took every line out of Salt Lake and selected in every instance the station nearest 200 miles from Salt Lake? A. No, I didn't do that. I tried to average it up so as to make a fair average. Q. But if you are going to prepare a statement showing rates for 200 miles—— A. Well, you can't get exactly 200 miles. Q. But you can get the nearest station to 200 miles distant, can't you? A. I think it would average up the nearest station to 200 miles. Q. I am not speaking about the average. That is just the question I raise—the average that you made. What I want to know is whether you took the station nearest the 200-mile point? A. What I mean by that, Judge, is this—— Q. I am talking about one statement and you are talking about another. I am speaking now about Exhibit 160. Let's stick to that until we finish. Now, the question is whether, in preparing Exhibit 160 and selecting the points out of Salt Lake and out of Denver, respectively, you took every line of railroad, for instance, leading out of Salt Lake and selected on that line the station exactly 200 miles or nearest 200 miles (if not exactly 200 miles) from Salt Lake, in every instance? (2607) A. No, I didn't do that. Q. You selected some other station? A. I tried to average it up so that it would make the mileage balance in both cases as nearly as possible. Q. You did the same thing with reference to Exhibit 159, didn't you. A. Yes, sir.

Salt Lake rate adjustments.

"Q. When you were on the stand yesterday, after lunch, when you brought in the statement that was prepared during the noon recess, and when you say I raised some question about the selection of Ogden instead of Salt Lake for comparison on the Southern Pacific, and I asked you why you took Ogden instead of Salt Lake, you testified that it was because you didn't have the tariff of Salt Lake, didn't you? A. I said in the hurry I couldn't find them, and you asked me whether or not I didn't have all the tariffs here. I said that I had if I had time to look thoroughly for them, but I had very short time to prepare the statement. Q. But the reason you gave for selecting Ogden in that case instead of Salt Lake City was that in the hurry you could not find the tariff from Salt Lake. Is

that true? A. That was true. Q. Now, Mr. Love, don't you know that the rate from Salt Lake to Tecoma, which is the point you selected on the Southern Pacific, is shown in the same tariff and on the same page as the rate from Ogden to Tecoma, which you took? A. The rates which I have were some paper rates that were gotten out some time ago, when the line was first opened out there, and I got the figures myself from the Oregon Short Line office, and that was the only tariff I had in my office at the time. I had to go and get the tariffs to-day in the Bureau office. Q. Is that the tariff you took in making the statement you brought in yesterday? A. Yes. I used some pencil rates—the only thing I had in my office at the time. Q. Then you did not use a tariff at all—you used a memorandum? A. It is a tariff. It is a copy of the tariff. It is authentic. Q. Who made it? A. I did myself. I copied it from some figures. Q. Isn't it a little singular that you would make on your own memorandum the rate from Ogden to Tecoma and not the rate from Salt Lake to Tecoma? A. Why, no; I knew the rate. They had some rates published; the rates used to be published from Ogden and not from Salt Lake.

Salt Lake rate adjustments.

"Q. If you knew the rate, why didn't you put it down on the statement yesterday—the rate from Salt Lake instead of the rate from Ogden? (2608) A. Well, I gave you my reasons for it, and the result is exactly the same as I told Mr. Plaisted yesterday when I got through. That wouldn't change the result. Q. I am not speaking of the result; I am speaking of the fact—that you brought in here, in response to a request for a statement of the rates from Salt Lake, a statement of the rates from Ogden, and you gave as a reason that you couldn't find the tariff from Salt Lake to Tecoma. Now, if I understand your statement, you say that you made your statement yesterday from some pencil memorandum that you had? A. Well, it is a copy of the tariff that I made myself, or a copy of the rates that I got from the Oregon Short Line Railroad some time ago. Q. And you say it is not singular that you should have made this pencil memorandum of the rate from Ogden to Tecoma but not from Salt Lake to Tecoma, when you do business at Salt Lake? A. The rates from Ogden and Salt Lake are exactly the same to these points.

"Q. Why didn't you say that in your statement yesterday? A. I did say that in answer to your question. Q. Why didn't you bring in a statement that showed the rates from Salt Lake when you were asked for the rates from Salt Lake and not from Ogden? A. Because we always regard Salt Lake and Ogden as common, and we never differentiate between them. When we say rates out of Salt Lake or Ogden, a traffic man knows the rates are the same. Q. And yet you brought in yesterday a statement of rates from Ogden to Tecoma and gave as a reason for that, instead of bringing in a statement of rates from Salt Lake to Tecoma, that you didn't have a tariff and you didn't know what the rate was? A. Another reason was that the mileage was shown. I had to get the mileage

from the Guide. The mileage is not shown in the tariff, and the mileage out of Ogden was taken from the Railway Guide. Q. You brought in a statement that showed a 59-cent rate for 113 miles out of Ogden, whereas, if you had brought in what you were asked to bring in, you have shown a rate of 59 cents for 150 miles out of Salt Lake. A. Well, the rate from Salt Lake to a point 100 miles, there is little difference in the two rates."

Salt Lake rate adjustment.

Complainant's Exhibit 159 shows that over the Oregon Short Line from Salt Lake to Cornish, a distance of 99 miles, the 4th class rate is 26 cents; (2609) and that on the Colorado & Southern from Denver to Greeley. exactly the same number of miles, 99, the rate is 15 cents. Those are the actual rates and the actual mileage, according to the tariffs and according to the Guide. So that the Short Line charges witness 26 cents for the same haul that the Colorado & Southern makes out of Denver on the same class for 15 cents. This exhibit also shows that the Union Pacific rate from Salt Lake to Wahsatch, which is a station on the Union Pacific—of course a combined rate—the Short Line and the Union Pacific—they charge witness 30 cents for 113 miles; the Chicago. Burlington & Quincy from Denver to Akron, 112 miles (one mile shorter) only charge 25 cents; and the Union Pacific itself for 115 miles from Denver to Hugo, Colorado, that is two miles longer than from Salt Lake to Wahsatch, charge 22 cents. or 8 cents less than the rate to Wahsatch, which is two miles shorter out of Salt Lake. This exhibit also shows that the rate from Salt Lake to Newfoundland, on the Southern Pacific, for 112 miles. is 45 cents; that the rate on the Chicago, Burlington & Quincy from Denver to Akron. 112 miles, is 25 cents. In each case that is actual mileage and actual tariff rate according to the tariff and according to the Railway Guide.

Out of Salt Lake for the points on Exhibit 160, 200 miles, those rates averaged $16.55—82½ cents a hundred. "Q. * * * I would like to see how you make your calculation on that. (Handing witness a piece of paper.) The first, I say, from Salt Lake to Green River runs all the way through at 75; from Salt Lake to Milford runs all the way through at 62; Salt Lake to Wells, Nevada, all the way through at 73; Salt Lake to American Falls, Idaho, all the way through at 40, and Salt Lake to Curries, Nevada, all the way through at 81. What does that average? A. $16.05. Q. The average per hundred? A. Oh, the average per hundred? Q. That is the way you averaged it, isn't it? A. Yes. 66 cents. Q. Averages 66 cents? A. A little over 66. Q. Well, how do you get an average of over 80 cents in this statement Exhibit 160? A. Have you given me all the figures there are in the statement? Q. I have given you all the figures, as I understand it. A. (After looking at the exhibit.) It looks like there is a mistake there. Q. There is a mistake in your statement? A. It appears that way. Q. And according to the average now, instead of being over 80, you said it is 66 cents a hundred? A. Yes. There appears to be a mistake there, Judge. Q. And it is not even 66, is it? It is 65 1-5, isn't it?

"There appears to be a mistake there, Judge."

A. Approximately. Q. How much is that a ton—65 1-5 a hundred? A. I think you will find a difference in the others, too. Q. Well, let's deal with this one first. How much is 65 1-5 a hundred? A. Well, it is over 12 dollars and something. Mr. SEVERANCE. It figures $13.40. Mr. LOVETT. You and your witness don't agree; he says 12 dollars and something. Q. 65 1-5 a hundred is how much a ton? A. A little over $13. Mr. SEVERANCE. I gave it to you straight. Mr. LOVETT. Yes; you were better than the witness. Q. Then, according to your present calculation your statement Exhibit 160 is wrong by over 20 cents a hundred, isn't it? A. Yes; unless the stenographer has made a mistake in copying these figures off.

Exhibit 160 is wrong.

"Q. Then another question. I notice on that statement that in comparing on the Southern Pacific you take Curries, Nevada. Where is Curries, Nevada? A. On the Western Pacific, isn't it? (2611) Q. On the Western Pacific, yes. A. It is on the Nevada & Northern road. Q. It is on the branch line, isn't it? A. Yes, sir. Q. Where the combination of locals is used? A. Yes, sir. Q. And that is not a fair representative for that distance, is it? A. It is the only access we have to that town. Q. I know, but there is a main line of the Western Pacific, isn't there? A. It doesn't run there. Q. No; but why didn't you take a point 200 miles distant on the Western Pacific? A. The Western Pacific has no tariff 200 miles out of Salt Lake at present. Q. So you took this station, Curries, where there is a combination of locals over the Western Pacific? A. I took the only thing I had. Q. And that is very much higher than any of the others, isn't it? A. Yes, sir. Q. And that raises the general average? A. It does, yes, sir. Q. Do you ever ship anything to Curries? A. Yes, sir; lots of stuff.

"Q. Now, if you had taken the Union Pacific and the Short Line and the Southern Pacific, instead of all the roads out of Salt Lake, the average would be very much lower than even 66 cents a hundred? A. Yes, sir. Of course there are reasons for the low rate on the Oregon Short Line, on the Union Pacific, and on the Southern Pacific, especially on the Oregon Short Line and on the Union Pacific. Q. What are those reasons? A. The reasons are that those rates were put in under pressure, in 1892. When we had a hearing of the Interstate Commerce Commission scheduled for Salt Lake, the railroad people and the business men got together, and under an agreement we were given rates out of Salt Lake to points on the Oregon Short Line and on the Union Pacific. Those rates have never been changed, with the exception of a few instances, from 1892 up to the present time; in a few instances they have been raised. Q. That was in 1892? A. Yes, sir. Q. And was that also on the Southern Pacific? A. No; the Southern Pacific didn't reduce their rates at that time. Q. You testified yesterday that the Southern Pacific had reduced its rates—— A. Yes, sir. Q. Within the last two or three years? (2612) A. Since the Ely country opened up and the smelter was put in there, the rates

Rates to Ely country have been materially reduced.

out of that country have been reduced very materially. Q. That is, Southern Pacific points in Utah and Nevada? A. Yes, sir. Q. And when was that reduction made? A. I think there have been some reductions made in the last few years. Q. Haven't these rates been reduced since 1892? Weren't they reduced in 1908 on the Union Pacific? A. East-bound? Q. Out of Salt Lake; I don't care which bound it was—out of Salt Lake to these points that you have mentioned. A. I don't recall that they were; there may have been some slight changes made. They were immaterial. I believe they were reduced east of Evanston; I think the rates were reduced east of Evanston some.

"Mr. LOVETT. The defendants object to Complainant's Exhibits 159 and 160, because the witness' testimony shows that the figures given are inaccurate. Mr. SEVERANCE. You have not examined him on 159, where he has some comparisons that are actual. Mr. LOVETT. I thought those on 160 were actual. Mr. SEVERANCE. I don't mean actual, but I mean identical. WITNESS. I think that is a clerical error in those rates only. Mr. LOVETT. There is an error, isn't there? WITNESS. Yes, sir. Mr. LOVETT. I don't care what kind it is. Mr. SEVERANCE. Can you find out and be back here this afternoon? WITNESS. I think so. Mr. SEVERANCE. You have not shown that any of those figures are wrong; you have not asked him anything about it. Mr. LOVETT. Well, I have no doubt they are, but I don't know where. Mr. SEVERANCE. Do you want to take this exhibit with you and look it over and come back here in a little while and tell us whether they are right or not? WITNESS. Yes, sir. Any objections to taking these exhibits? The witness left the court-room, taking Exhibit 160 with him.

(Later in the afternoon, after the hearing at Salt Lake had adjourned, the exhibit was returned to the reporter. After the words 'average ton (2,000 lbs.) rate out of Salt Lake,' the figures '$16.55' were stricken out and '$13.24' inserted in red ink. After the words 'average ton (2,000 lbs.) rate out of Denver,' the figures '$11.00' were stricken out and '$8.80' inserted in red ink. This was followed by the notation in red ink 'The figures in red are correct. S. H. Love.')"

McCarthy.

(2613) WILLIAM S. McCARTHY—Recalled.

Fast freight trains.

The 54 hour train between Omaha and Ogden didn't run eight months, as testified to by Mr. Oglesby, but for seven years, namely, from 1897 to 1904. It was known as train No. 19. They had on during the same period a 76 hour train. A 32 hour Portland Special ran only a short time; thinks probably sixty days. It was put on because of the quarrel between the U. P. and the O. S. L., and ran over the Shasta route to Portland. Thinks that was in 1897. (2614) The 32 hours was scheduled between Omaha and Ogden. Witness didn't know whether or not the train lost money. (2615) Witness never loaded any wool on the S. P. west of Ogden. He was con-

tracting freight agent in Salt Lake City. Probably solicited people in Salt Lake, however, for business moving east from points on the O. S. L. west of Ogden. (2616) Never had anything to do with solicitation of wool on the S. P., however. He represented the U. P. "Q. Were you ever detailed to go to the Southern Pacific in connection with the wool traffic? A. No, sir."

Murphy.

(2616) C. E. MURPHY.

Salt Lake. Lumber merchant.

For fourteen years in the retail lumber business at Salt Lake. Gets the majority of lumber from the neighborhood of Portland. (2617) Before the merger the S. P. solicited the business via Shasta route, and the O. S. L. via the O. R. & N. It hasn't moved over the former road of late years. Several years ago it did. Has quite recently bought lumber from the Coos Bay region. That moves by rail from Bay Point, California, to Salt Lake over the S. P. It goes by water from Coos Bay to Bay Point. It it quite an extensive lumber region around Coos Bay. The joint agent doesn't solicit business from Portland, but does solicit eastern business. The Portland business all comes over the O. S. L. (2618) The business which witness testified was formerly solicited by either the S. P. or O. S. L., came from Grants Pass, Oregon, on the line of the S. P. between Sacramento and Portland. Witness couldn't say whether or not the S. P. agents had ever solicited Portland business.

Lumber routes.

Goodwin.

(2619) C. C. GOODWIN.

A journalist of Salt Lake, for 29 years. Senator Clark said at Alta Club Dinner: "We are going to build that road as an independent road, to Los Angeles or San Pedro." An interview was published in the paper, stating that Senator Clark proposed to have a steamship line in connection with the road.

Romney.

(2620) ORSON D. ROMNEY.

Lumber routes.

For twenty years in the lumber business at Salt Lake. Distributes his wholesale business in Utah, Idaho and Montana. Supply comes chiefly from the vicinity of Portland, and moves over the O. S. L. 10 or 12 years ago it moved over the Shasta route. The shippers route the lumber. There are some shipments made very quickly now, and some very slow. Witness' opinion is that in many instances they are slower than they used to be. Some comes through in a week; some in two weeks; and even longer. (2621) Witness thought from Portland via San Francisco and the Shasta route would be nearly twice as far as via the O. S. L., and the grades much steeper.

Merrill.

(2621) GEORGE E. MERRILL.

Salt Lake. Lumber merchant.

For seven years in lumber business at Salt Lake, and five years previously in Wyoming. Wholesales in Wyoming, Nevada, Idaho

Lumber routes.

and Utah. (2622) Supply comes largely from Oregon; some from Washington and California. From Portland it comes over the O. S. L. Never moved any other way from Oregon during witness' time. Has been in a position to know of that movement about five years. Until very recently—it is barely possible that the tariff has been canceled recently, the same rate applied to Ely, Nevada, via either the O. S. L. and O. R. & N., or via the S. P. line, that is, by the Shasta route via Sacramento. Ely is on a branch line in Nevada, 140 miles south of Cobre, where it joins the main line. Cobre is about 140 miles west of Ogden.

(2623) Witness ships to customers on the S. P. direct from points in Washington and Oregon. The Shasta route is open to Nevada points, not through to Ogden, but to stations just over the Nevada line, in Utah. Shipments east of Tecoma, which is just inside of Nevada, 125 miles from Ogden, come by the O. S. L. Witness didn't know whether or not you could now ship to any point west of Ely by the O. S. L. Even when the rate was in effect, up to very recently, it applied a short distance beyond Cobre on the main line of the S. P., and to any point west of that the traffic had to move by the Shasta route. No lumber comes to Salt Lake by the San Pedro. (2624) Lumber comes to Salt Lake by the S. P. from California points. The shingle rate from Portland to Salt Lake is 47½ cents. From San Francisco witness thought the rate was 40 cents. The rate on lumber between those points used to be identical. The rate from Portland now is 37½ cents, and from California common points 40 cents. Lumber from Seattle and Tacoma comes in over the O. R. & N. and O. S. L., and moves to Portland over the N. P. It is very rarely moved to San Francisco by boat, thence over the S. P. On one occasion, within the last two or three years, shingles came from Vancouver by boat to San Francisco, and thence over the S. P. Some lumber comes from Puget Sound by way of Butte and the O. S. L., the Silver Bow gateway.

Murphy.

(2625) FRANK S. MURPHY.

Salt Lake. Lumber merchant.

Since 1895, in the lumber business at Salt Lake. Wholesales into Utah, Nevada and Wyoming. Supply comes from Oregon and California, some from Washington, principally Portland and vicinity. It moves over the O. S. L. (2626) Twelve or thirteen years ago witness used the Shasta route. His Oregon business was then solicited by both the S. P. and O. S. L. Lumber moved over the Shasta route and the D. & R. G. from Ogden. Witness understands that you can not now ship by the Shasta route to Ogden, or points near there. If a shipment originates on the S. P. south of Portland, it must come by the Shasta route to any point on the S. P. west of Ogden, but if it originates at Portland, it can come over the O. S. L. and go as far west as Cobre, on the 40 cent rate. Witness thought the shingle rate from Portland is now 7½ cents higher than from San Francisco.

(2627) They were formerly the same. From Coos Bay, lumber moves to San Francisco by boat, and thence by rail. Witness thought from Portland to Ogden there was 500 miles in favor of the O. S. L. line, as against the Shasta route. The grades are much heavier on the latter.

PORTLAND, OREGON, MAY 3, 1909.

(2629) D. C. O'REILLY. O'Reilly.

For nineteen years a resident of Portland in the towing and lighterage business. Came there from Denver, where he was in the railroad business. (2630) Was formerly employed by the U. P. at both Omaha and Denver. Employed in the freight office in Omaha, and was general freight agent in Denver. When witness came to Portland was traveling freight agent of the U. P. That was in 1891. Remained in its employ until 1894, and after that was with the O. R. & N. for about three years. Part of the time he was general western freight agent of the U. P. at Portland. Ben Campbell was the general western freight agent of the Union Pacific until the receivership, July 4, 1894. Afterwards he was traffic manager of the O. R. & N. Portland. Formerly in U. P. traffic Dept.

(2631) In 1895 and 1896, and possibly later, there was a war of rates between the boat line and the S. P. from Portland to San Francisco. The freight rate got as low as $1 a ton. Witness thought the S. P. didn't absolutely meet the low rate of the water line, but he isn't certain. There was a steady decline of rates for a year and a half. (2632) The passenger rates did not go below $5.00 first class fare each way. There was also a line of boats running to San Francisco from Yaquina Bay. It was operated in connection with the Corvallis & Eastern. That line runs from Yaquina Bay, from Newport, to a place called Detroit, up in the Cascades. It crosses the S. P. at Corvallis and Albany, and crosses the Willamette River at Albany. It runs probably 60 or 80 miles east of the Willamette River. It connected with Portland by boat. Locally this line competed in the rate war that was on, but not between San Francisco and Portland. The traffic in competition between the S. P. and O. R. & N. and the Corvallis & Eastern connections at San Francisco was south-bound, grain and potatoes, and north-bound, general merchandise. Rate war between San Francisco and Portland.

(2633) This moved by boat and by rail. There was also competition for business from San Francisco to Montana points between the O. R. & N. and the Central Pacific line via Ogden. The former line moved by way of Huntington and Pocatello, and by boat from San Francisco. The other line was the Central Pacific and the U. P. and Short Line. Doesn't remember the S. P. shortening their time between Portland and San Francisco to meet the competition of the boat line. Thinks the passenger schedule was in the neighborhood of 36 hours, but his recollection is that passenger time of rail line was not a factor. The boat schedule was 53 to 55 hours. After the rate war was terminated, there was a differen- Montana business.

tial between the boat line and the rail line. (2634) The O. R. & N. were never in the field for business between California and Utah points. Points west of Pocatello were competitive, and the business moved both ways and around by Portland. Thinks in 1894 a steamship line was established in connection with the O. R. & N., called Samuel Samuel's line. Thinks the Dodwell Line succeeded the Samuel's line.

Steamship lines.

(2635) Thinks there were thirty day sailings on the latter. They brought in tea, silk, matting, curios, which moved through the Huntington gateway. The Portland & Asiatic was then organized, and its traffic moves the same way. Traffic from the Atlantic seaboard, while witness was connected with the O. R. & N., reached Portland by the U. P., G. N., N. P. and S. P. The Sunset route participated in that business. The O. R. & N. received that traffic at Huntington from the O. S. L., and at Spokane from the G. N. The N. P. came into Portland over their own rails, and this traffic was solicited by the agents of all these companies. (2636) The competition, witness thought, was active. The Atlantic seaboard business consisted of dry goods, iron and commodities of that character. In witness' time the Portland merchants distributed their commodities to all points west of Pocatello, west of Wallace, and of Spokane. Isn't certain how far south they went, but there is a dividing line down on the S. P. somewhere. There was no part of Oregon that wasn't directly tributary to Portland. The part of Idaho that was reached by the O. S. L. and O. R. & N. was also tributary to Portland.

Seaboard business.

Portland's jobbing territory.

(2637) The competition of the Portland merchants with San Francisco was in a local way. Was principally in the Willamette Valley, and in a general way, of course, on what are called California commodities, they were more or less competitive all over the northwest; and traffic moved up from San Francisco into the Pocatello territory. The Portland jobbers, witness believed, had Salt Lake competition in Southern Idaho. There was also traffic to the Atlantic seaboard that was the subject of competition between these lines—wool, hides, hops, canned goods, canned salmon. In those days it was considered quite important. The traffic now is much larger, because of the growth of the country. Witness' recollection was that the O. R. & N. met the competition of the Sunset route on Atlantic seaboard east-bound business. Business moved out of Portland either through Ogden or by the Sunset to the east, for points west of Pittsburg.

Competitors of Portland merchants.

Competition on east bound seaboard traffic.

(2638) At one time there were three O. R. & N. boats running, and witness thought there was a four day service to San Francisco, and then it was cut down to two boats and a five days service. It changed at different times, according to the existing conditions. During the receivership there was a hitch, and for a time divisions were taken out via Huntington. The U. P. for a time worked traffic into Portland by Ogden and Sacramento or Marysville.

(2639) The O. S. L. and O. R. & N. then worked with the Colorado lines. Witness thought the U. P. also took their traffic, even when the divisions were out. The chief part moved by the Colorado lines, and the U. P. worked with the S. P. That didn't last more than a few months. They made a special offer in the matter of service by the Shasta. The O. R. & N. boats went up the Willamette River as far as Corvallis. They brought in grain, potatoes, hops, some wool. The hops and the wool were in a class of commodities that would move by rail. What came in on the O. R. & N. boats went east via the O. R. & N. The O. R. & N. ran a boat line on the Yamhill River.

Controversy between U. P. and O. S. L.

Hops and wool.

(2640) The traffic that was brought in was traffic that could also move over the S. P.—what you might call eastern commodities. There were some potatoes and grain that the S. P. wouldn't touch. The latter quite largely moved to San Francisco by the boats. The U. P. operated the O. R. & N. prior to 1894. Then there was a receivership, with Mr. McNeil as receiver, and afterwards the O. R. & N. operated its own line. (2642) The rate war between the O. R. & N. boat line and the S. P. was during the receivership. A differential had existed between the passenger rates prior to that, and the S. P. attempted to abolish it. The war terminated by a concession of that general differential and a general agreement as to freight conditions and other matters. The merger made no change in the condition as it existed after the termination of the war. The number of boats and their quality has been practically the same. During the war the passenger rate got as low as $5.

Rate war.

(2643) The Corvallis & Eastern was purchased by Mr. Hammond under foreclosure in 1893. He laid up the boats on the Willamette River in 1896 or 1897, because they didn't pay. The traffic didn't warrant their operation. They were operating from Corvallis to Portland, according to the stage of the water, from all points. Hammond only operated the boats about two years. The Corvallis & Eastern handled north-bound probably 300 or 400 tons a trip. (2644) They made about two and a half trips a month. The south-bound tonnage was about the same. The U. P. worked Portland business by the Shasta only a short time, and the Short line worked strong against the O. R. & N. in Idaho during the same period. It was during the period of disintegration of the U. P. system proper. The Willamette River boats of the O. R. & N. have all been laid up at the boat yard. They have all been wrecked once or twice. Boat operation on the upper Willamette is not profitable. It was a light draft proposition. The river was also narrow and snaggy and swift in places.

Corvallis & Eastern.

Transportation on Willamette River not profitable.

(2645) The low water season continues about three months. It continues anywhere from the middle of October to the 1st of December, sometimes later. The tonnage of wheat since witness' time has dropped from the principal to almost an incidental product, so far as the territory along the Willamette River is con-

Change in traffic.

cerned. The country along the Yamhill River has also changed. Wheat was the principal traffic of the boats in witness' day, which kept the boats alive. (2646) The territory at Wallace was competitive between Portland and Spokane. San Francisco and the east has always done more or less business out through eastern Oregon and Washington. Those competitive conditions have remained about the same all the time. The Dodwell and Samuel's Lines were organized principally for the purpose of taking away the flour tonnage which originated on the O. R. & N. to Asiatic points. The Dodwells had a line which they operated in connection with the N. P. from Tacoma and Seattle to Asiatic points. It was organized for the same purpose. The inbound cargo was not heavy. The service by the Samuel's and Dodwell Lines was a boat about every thirty days.

Purpose of organizing Dodwell and Samuels lines.

Inbound cargo not heavy.

(2647) Out of Puget Sound the sailings were more frequent. From San Francisco there was a big tonnage. Some of the boats out of Portland had limited first-class passenger accommodations. They carried very few passengers. The line was not really known as a passenger line. The bulk of their tonnage was flour milled at local mills. The water line has always fixed the rates between Portland and San Francisco. The principal factor at all times during witness' experience and knowledge in fixing rates between Portland and San Francisco has been the water line. "The water line fixes the rates, the water competition always." (2648) The water competition has not been confined solely to boats operated by the O. R. & N. There have always been tramp schooners. The schooners would carry lumber down, and bring merchandise up, making low rates. They were operated independently and in considerable number all the time. That competition is as keen today as ever. There has been competition for all that territory between San Francisco and Puget Sound by steamer. (2649) Witness doesn't know whether the railroads today meet the schooner's low rates between Portland and San Francisco, or not. As long as witness was with the Company, the O. R. & N. and S. P. had separate agencies (2650) and competed with each other for business. The tramps don't maintain a regular organization, and the permanent line has the advantage. The Dodwell and Samuels Lines maintained Asiatic agencies to solicit business. Mr. Cameron also went to China, as agent of the Portland & Asiatic. Business which Mr. Cameron solicited came from the same ports from which the Pacific Mail steamers sailed. (2651) Such traffic as the P. & A. carried, besides flour, was limited in extent and originated east of the Missouri River. It consists principally of cotton, railroad iron and machinery. Some cotton came up from Texas over the O. R. & N. It also came into San Francisco by the Sunset. The iron and steel came to Portland from Pittsburg territory. Most of the traffic from the Orient was destined to points east of Portland. The Samuel's line was subsidized by the O. R. & N., that is, guaranteed

The water lines, including tramp schooners, have fixed the rates.

Dodwell and Samuels lines maintained agencies in Asia.

Traffic of P. & A.

a certain amount of westbound tonnage, whether it was actually shipped, or not.

Willamette Valley hops and wool.

(2652) Witness understands there has been a change in the hop production in the Willamette and Yamhill Valleys. It goes up and down, but hasn't been abandoned. Most of the wool in the Willamette Valley is cut from small bands of local sheep and goats. Witness is not familiar with that industry at the present time. The

Willamette River boats.

boats on the Willamette are not profitable now. In witness' time they were profitable, even as an independent proposition. They are now practically taken off the Willamette, except to Oregon City. The O. R. & N. runs a boat that far. The Oregon City Transportation Company runs a boat line up the Willamette. (2653) Boats were frequently wrecked on the Willamette, but were raised. It was rather expensive. The O. R. & N. boat service was gradually discontinued, with a gradual decrease of the traffic. The last boat probably taken off last year. This has occurred since 1901. Witness understood Mr. Harriman purchased the Corvallis & Eastern. It has been witness' experience as a railroad man that you had to solicit traffic to get it, particularly competitive traffic.

(2654) Witness knew of no change in the competition between the O. R. & N. and the S. P. as it existed after they stopped quarreling in 1897. During witness' time the O. R. & N. railroad agent looked after the boats. Now the boats have a separate agent and a separate office, a separate soliciting force working in competition with the S. P. The Corvallis & Eastern used to operate as many boats on the Willamette as the O. R. & N. and several years before Mr. Harriman purchased it, Mr. Hammond junked the

Mr. Hammond junked his boats.

boats. (2655) The Corvallis and Eastern has operated no boats since 1900. A man named Young represents the North Pacific Steamship Company at Portland. They operate a regular line of steamers in competition with the O. R. & N. boats and the S. P. There are also tramp steamers. The schooners are largely operated in connection with the mill owners in Portland. (2656) Witness thought at one time the O. R. & N. had a four day service; now he thinks a seven day.

McBride.

(2656) W. C. McBRIDE—Recalled.

Wool traffic from Idaho, Utah and Nev

Witness' railroad experience described. (2657) Now general agent of the D. & R. G. at Portland. Wool and live stock are the principal commodities of the territory in southern Idaho and northern Utah and Nevada lying between the O. S. L. and the S. P. There was competition for the wool business. The competition was when the wool was on the sheep's back, to get the sheep driven from one line to the other. The live stock went by both lines. It moved to the east all-rail. Largely moved to the Missouri River packing houses. (2658) For a short while during 1897 the U. P. moved traffic to Portland via the Shasta route. When witness was at Butte (about 1897 to 1902), California traffic came to that region either via Ogden, S. P. and O. S. L., or via the O. R. & N.

boats at Portland and then rail via Huntington or Spokane, and the G. N. Traffic from San Francisco to Butte via the O. R. & N. was moved from Spokane to Butte over the G. N. They had divisions in connection with the G. N. through Spokane with portions of Montana as well as the N. P., witness believed. Some of the traffic moved to Huntington and then via the Short Line. (2659) The preponderance of the traffic that way moved by the S. P. and O. S. L. In the old days, before the Lucin cut-off was built, the Central Pacific and the O. S. L. ran parallel and very close together for about 21 miles. Witness has known cattle as far west as Caldwell, Idaho, and Halleck, Nevada, to be competed for between the two lines. The wool traffic was competed for as far west as Kelton, about 80 miles from Ogden. Such wool as the S. P. controlled went by way of Sacramento and thence Sunset. (2660) At that time there were no divisions through Ogden either by the U. P. or D. & R. G. There were no divisions prior to 1898 or 1899.

Montana business.

Wool traffic.

(2661) A great many sheep wintered in what was known as the desert west of Salt Lake, and in the spring of the year, as the shearing season approached, they would start north to the summer ranges in Idaho, and the solicitation would commence in order to have them stop and be sheared somewhere near the railroad. There were cattle and horses that originated in northern Nevada and southern Idaho, that might go east over the S. P. or the O. S. L., and over the D. & R. G. or U. P. when controlled by the S. P.

(2662) When witness said there were no divisions through Ogden either with the D. & R. G. or with the U. P., his statement applied only to the wool traffic. They had divisions ordinarily on almost everything.

Burdick.

(2662) A. C. BURDICK.

Portland. Prunes.

Lives in Portland, Ore. Since 1898 in prune business, for the last five years at Vancouver, and formerly at Portland. Ships to all import jobbing points between Denver, New York and Boston. Traffic from Vancouver moves over the North Bank road in connection with the N. P., G. N. or Burlington.

(2663) Before the North Bank road was built, witness shipped by the N. P. and O. R. & N. and G. N. From Portland he used to ship several ways. The S. P. used to take traffic to New York by the Sunset. Traffic from Kansas City they would switch off at Sacramento. The O. R. & N. went by the O. S. L. Since the consolidation of the S. P. and O. R. & N., witness has expressed a preference, and has routed his shipments over the O. R. & N. and Short Line. The solicitor expressed no preference, but said that witness could have his choice as to routes.

(2664) Number of cars witness ships varies according to the season. Sometimes he ships about 12, and sometimes 70 a year. He can ship any way he wants to, without restriction. It is purely a matter of preference. He doesn't know whether the Sacramento route is open to interior points now, because he has not wanted to ship that way.

(2664) E. C. WARD.

Ward.

For the last two months general agent of the Pacific Coast Steamship Company at Seattle. From 1894 to 1901 was in the transportation business at San Francisco. (2665) For 3 years prior to 1901 was the general agent of the O. R. & N. Company at San Francisco. Previous to that was local agent for the same company at San Francisco. Traffic that he secured moved out of San Francisco by steamer to Portland and points east. Montana points are Butte, Helena, Anaconda, Silver Bow, and several other smaller places. Didn't think Great Falls was a Montana common point, but took Montana common point rates on account of being intermediate —intermediate by the Great Northern. Traffic from San Francisco moved to those points over the O. R. & N. steamer lines and thence its rail lines and its eastern connections, also by the Pacific Coast Steamship Company and the G. N. and N. P. through Puget Sound; also over the Shasta route and the N. P.; also by the Central Pacific via Ogden and the O. S. L.

Seattle. Gen. Agt. Pac. Coast S. S. Co.

Montana business.

(2666) Traffic to Montana was largely California products—sugar, canned goods, dried fruits. There was no differential as between the water and all-rail lines. All moved on an equality. Witness thought the water and rail line via Portland had some slight advantage into points between Huntington and down about Boise, but not sure. East of Boise, between there and Pocatello, the rates were about equal, and traffic moved both ways from that territory. The O. R. & N. force in San Francisco consisted of seven, in the general agent's office, two freight and two passenger solicitors. The boats ran every five days, with an occasional freighter additional, when the cargo was sufficient. Three boats, and one in reserve.

(2667) During the rate war, rates got down to $1 a ton, possibly 75 cents a ton on such commodities as salt, once in a while. The S. P. rail rates were down to a basis of $2 a ton, dead weight, witness thought. Witness' recollection was the rate war lasted a year and a half. The traffic by boat north originated as far as witness was concerned at San Francisco, though their real originating points were in the interior. The other steam lines engaged in that controversy, and passenger rates were also reduced. The other lines had very limited passenger accommodations. They operated steam schooners, and could accommodate probably 15 or 20 passengers, while the O. R. & N. boats carried between 200 and 300, when full. The O. R. & N. on commodities moving to Montana, exchanged with the Short Line at Huntington, (2668) G. N. at Spokane, the N. P. at Wallula.

Rate war.

The O. R. & N. steamer line started the reduction of rates. It may have been a year and a half or two years before the S. P. became involved in it. Witness thought probably the reduced rates covered a period altogether of from 1895 to 1897. The passenger rate got down to $5, first-class, and $2.50 second-class. Not sure of the rail rate, but thinks it was $10. The steamer rate included berth

and meals. The rail rate, witness thought, included berth. There was some traffic moving from interior points to San Francisco and thence up by boat from Southern Pacific territory. (2669) Remembers one or two instances in which transcontinental traffic went to San Francisco via Portland and boat. Couldn't handle it that way, as a rule. Remembers moving stoves from St. Louis to San Francisco that way, and some vehicles from eastern territory. Remembers no shipments from Pittsburg. The vehicles came from Columbus, Ohio; some of them from Michigan. Came to Portland over the U. P., some over the Colorado lines, and some over the G. N., all in conjunction with the O. S. L. These shipments by Portland didn't last more than two or three months. It was in 1898 or 1899. Prior to 1895 there was a 25 cent differential, between the boats and the rail line, on the first-class rate. Doesn't recall what it was on carload stuff.

A few shipments via Portland route.

(2670) Thinks the all-rail rate for passengers was $20 first-class, and the steamer $15. After the rate war the differential was six cents on higher classes, less than carloads, and three cents on carloads. On passengers the steamer line had a $12 first-class rate, including berth and meals, and the S. P. $17, which included a Pullman berth. They had a rebate system, charging the passenger $25, and rebating him $7 or $8. In 1898 the railroad rate was as high as $25. The $1 a ton freight rate applied only to north-bound vessels. The south-bound rates were never that low. (2671) The tonnage north was always light compared with the capacity of the ships. The Pacific Coast Steamship Company's ships to Puget Sound competed for all business which went over into competitive territory on the O. R. & N. into Montana. There was also competition locally to Portland by steam schooners. That competition is now fully as keen, if not keener, than it was then.

Steam schooners.

(2672) The steam schooners were run primarily for the purpose of taking lumber south. Got whatever rate they could on north-bound freight. Now the business of the schooners is better systematized, better organized, and the competition more severe. Shipments from the east to San Francisco via Portland moved over the G. N. via Spokane, and the U. P. and Rio Grande lines, and thence up over the O. S. L. His recollection of vehicles moving via Portland was some fifty odd cars altogether; the stoves probably, not over 10 or 12 cars. The reason of the movement was that the rates were then more favorable via Portland. (2673) There was a lower rate from eastern points via N. P. and Pacific Coast Steamship Company to California terminals. It was not a through rate all the way on the stoves, but it was on the vehicles. The rate only applied to those two commodities, and witness thought they also moved pianos at one time. Witness' recollection was that the U. P. would not participate in publication of the through rate, but participated in the movement of the traffic just the same. There were through rates via Puget Sound to the Pacific Coast on these commodities only. Vehicles moved not on account of favorable rates, but on account of some

Shipments via Portland.

restrictions as to the length of the cars on the California line via Mojave.

(2674) Restrictions were due to snowsheds. The rate war terminated in 1896 or 1897, and was not renewed from that time up until 1901. Substantially the same rates continued during that time as had prevailed prior to the rate war, the water lines being allowed a differential. On the northern lines they allowed a fifty foot car for those vehicles, and on the southern a forty foot car. Hasn't heard of the closing of any routes via Shasta or otherwise from San Francisco to Montana common points. The Pacific Coast Steamship Company still carries freight in connection with the G. N. and N. P., and the O. R. & N. rail and steamer is engaged in competition with the Pacific Coast Steamship Company. The Shasta route in connection with the N. P. via Portland still engaged in the business. (2675) Also the S. P. and O. S. L. via Ogden had equal rates to Montana. The situation in that respect to Montana common points is substantially the same as it was prior to 1901. As witness understands it, the S. P. with its connections is still a competitor of the O. R. & N. boat line and its connections, for Montana business. The boat schedule from Portland to San Francisco was about 55 or 60 hours, and the rail schedule 36 hours. When witness was located in San Francisco one train a day ran each way, and the boats had a five days service. The freight schedule between the two places was four or five days. Details as to reduced rates during the war repeated.

Ocean competition.

Water and rail service between Portland and San Francisco.

(2676) The heavier movement of freight between Portland and San Francisco was south-bound, but a higher class moved north. On a general average the revenue on the latter was greater. During the Canadian Pacific differential, that company did a pretty good business into San Francisco from the east. Traffic came pretty generally from all points east of the Missouri River and north of the Ohio. During the differential, the G. N. and N. P. to the best of witness' knowledge did no business into San Francisco by Puget Sound boats. (2677) Once in a while a stray car goes into San Francisco by way of those Puget Sound boats. There are published rates in force that way; also by way of the O. R. & N. boat line. The Pacific Coast Steamship Company boats did not stop at Coos Bay. The Spreckles boats from Coos Bay to San Francisco carried merchandise north and coal south. Witness didn't think they carried lumber, although they may have carried a little.

Can. Pac. differential.

(2678) There are through rates from some points in the east, from Chicago, by the G. N. and its connections to Spokane, thence over the O. R. & N. to Portland and by boat to San Francisco. Rates are also made over the N. P. to Wallula, and thence over the O. R. & N. to Portland and by boat to San Francisco. Prior to 1901, witness never solicited business from San Francisco over the U. P. via Portland. (2679) If anybody had wanted to move freight that way, witness would have solicited it, but never heard of anybody desiring to do so, at equal rates. Never heard of any

Through rates via Portland.

Never solicited freight via Portland for U. P.

freight moving that way, or of any rate being in effect that way during his time. Thought physical situation of roads was as effective as the Vancouver route. The Portland route is shorter than the Vancouver; and in the movement of traffic, distance (unless it is very excessive) doesn't make any difference.

Adams.

(2680) H. M. ADAMS.

Portland. Formerly trav. frt. agent for O. R. & N.

Lives at Portland, Oregon. General freight agent of the Spokane, Portland & Seattle Railroad since it opened for business in December, 1907. It runs from Portland to Spokane. Traffic from the east moves into Portland over that road in connection with the N. P. and G. N. The connecting point up to the present has been Pasco, but commencing to-day business is taken from those two roads at Spokane. Formerly witness was assistant traffic manager of the G. N. at Seattle for two and a half years, and prior to that for three years assistant general freight agent of the O. R. & N. Left that Company in May, 1905. From 1898 to 1902 general agent of the same Company at Spokane, and prior to that for 2½ years traveling freight agent of the O. R. & N. out of Portland.

Rail rates always higher between Portland and San Francisco.

(2681) Went to work for the O. R. & N. in 1897 (?) as a clerk in the baggage department. Left the railroad service in 1890, and re-entered it as a clerk in the ticket office at Seattle—then U. P.—in 1894. Remained a few months, and then came to Portland as a clerk in the general freight office. After that was appointed traveling freight agent as above stated. Witness doesn't recollect that there was ever a fixed differential between the Shasta route and the boat line from Portland to San Francisco. The rail rates were always higher. To constitute a technical differential there must be agreement as to divisions.

Willamette River traffic.

(2682) Witness believed that there was always a difference in the rates, though there was no fixed basis of differential. The O. R. & N. operated boats up the Willamette River to the head of navigation. How far up they went depended on the stage of the water. The boats usually included Corvallis, Albany, Independence, Salem and Oregon City. They never went higher up with regular service. There were some boats above Corvallis periodically, but not a regular service. Corvallis was as far up as any regular service was ever maintained. It was generally a daily service, as long as the freight traffic offered support to that kind of service. Farm products and paper from mills at Oregon City were brought into Portland by those boats. A large quantity of paper and the farm products—potatoes, in particular, went to San Francisco by boat. The through rates on hops to the east applied in connection with the Willamette River boat lines then, just as they do to-day. Hops shipped on the Willamette boats at the time witness was familiar with the traffic, say after the year 1894, could move out of Portland over the O. R. & N., thence either to Wallula on the N. P., via Spokane and the G. N., or via Huntington and the O. S. L.

(2683) The S. P. participated in the hop movement from the same territory via their own line. Witness thought the rates applied on hops both by the Ogden and Sunset routes, but was not positive. The business generally moved via the Sunset. "The hops are not delivered at these common points very largely; some of it is, but a great deal of it originates at local points on the River, and that business was not tributary to the S. P., of course, because they had no through rates in connection with the steamer lines. The business on the rail lines, of course, was tributary to the S. P. and moved largely via their lines." Hops moving from the towns witness has mentioned could move either way, and they were competed for by the two lines. As to lumber from Portland, Colorado and Utah common points, before the merger, witness was not in close touch with it before it began to move through Portland, but, as a matter of common knowledge, the lumber traffic prior to that time moved through Sacramento. In those days lumber also moved to Utah points by the O. R. & N. and O. S. L.

Hops and lumber.

Routing of lumber traffic.

(2684) Thinks it was some time in 1902 that the tariffs were so adjusted that business no longer moved by the Shasta route and Central Pacific to Utah. The rates via Sacramento to Utah and the east were withdrawn, and rates applied via Portland, instead of from the Willamette Valley territory. After that, traffic went to Portland and east over the O. R. & N. and O. S. L. Business was then solicited via Portland, rather than Sacramento. As far as witness knew, all Nevada business from Portland always moved via Sacramento. That exclusive movement continued as far east as Utah common points. There were many routes from San Francisco to Montana common points. After rates were established via Ogden in connection with the Central Pacific and O. S. L., that route was opened; there was an all-rail route via Portland and the N. P. There were the water routes to Portland in connection with the O. R. & N. and the N. P. through Wallula, the G. N. through Spokane, and the O. S. L. through Huntington. There were also routes open by steamer from San Francisco to Puget Sound, and then in connection with both the N. P. and G. N.

Routes to Montana.

(2685) Considerable traffic moved from San Francisco to Montana common points and was actively competed for by these different routes. Witness can remember a long time ago when there was a three or four days O. R. & N. boat schedule between San Francisco and Portland. Now there is a weekly service. Witness' line, with its connections, makes on freight from St. Paul to Portland six days, and Chicago eight or nine days. During witness' connection with the Company, traffic moved from San Francisco to the territory between Huntington and Pocatello by way of the O. R. & N. boat line and the rail lines. During the latter part of that time business to the same territory went over the Central Pacific and O. S. L. At that time there was quite a considerable amount of this traffic. Sometimes the Willamette boats couldn't go even as far up as Salem. (2686) During the low water season the

Navigation on Willamette River.

boats had great difficulty in navigating above the falls at Oregon City. The low water period continued from about August to November. Very often there was a low water period in the winter time. Snags, bars, wreckage, were other difficulties in connection with this navigation. When witness' connection with the O. R. & N. at Portland ceased, in May, 1905, it was still engaged in navigating the Willamette River to a limited extent. (2687) Various lines from San Francisco to Montana common points renamed. All those lines have always been open. There are no rates from San Francisco via the Spokane, Portland & Seattle.

Steam schooners fixed the rates.

(2688) The O. R. & N. boats were in competition with steam schooners all the time, and had to make rates which would get the business, no matter what that rate was. The rail rates were more or less permanent, because required to be published. The rates on hops from points in the Willamette Valley apply via Portland and the N. P., and the N. P. is now soliciting that traffic, that is, rail points on the S. P. to Portland and thence over the N. P. east.

Through rates applied from Willamette Valley via N. P.

Transcontinental rates apply generally from the Willamette Valley territory in connection with the N. P., the same as with the other routes. The rate adjustment applies all the way down as far as Ashland. So a shipper in the Willamette Valley may use either the N. P. or the O. R. & N. lines to the Missouri River and eastern points; also the Sunset route for Atlantic seaboard shipments.

(2689) The rate adjustment applies practically from every point on the S. P. lines in the Willamette Valley, irrespective of whether it comes in competition with the boats or not. In 1902 and thereafter the Willamette River boats did not earn their operating expenses. There was a deficit all the time.

Willamette River boats operated at a loss.

(2690) The boats were used as a feeder to the rail line at an operating loss. Witness thinks it was a coincidence that the operation of the boats ceased about the time of the merger. The traffic was becoming less all the time, and it had become apparent that an individual could operate the boats to better advantage than a corporation, and there was an opportunity to make through rates with the Oregon Transportation Company in lieu of the O. R. & N.'s own service, and still get the traffic for the rail lines; and that is done in connection with Capt. Graham's boats now. Witness' recollection is that hops originating as far south as Eugene, and that even traffic above the head of navigation, could move over the S. P. and thence via the lines out of Portland to the east. Thinks those rates have always been in force.

(2691) The S. P. line via Sacramento and Ogden is no longer open, nor are there any divisions with the Spokane, P. & S. via Portland. Witness is now negotiating for divisions over his line, and thinks he is going to win out. Witness thought the fact that the O. R. & N. had its own line from Portland to Spokane, which was competitive with his line, had some bearing on the question. The O. R. & N. and S. P. are very closely allied and have the same traffic officers in Portland. (2692) Rates on traffic from the east

over the N. P. and the Shasta route apply as far south as San Francisco, but not to points south of San Francisco. Stockton is the southernmost point. Witness' line was opened up to-day, and operates from Spokane to Portland. It is owned and controlled jointly by the G. N. and N. P. The N. P. closes the Puget Sound gateway to the O. R. & N. on traffic from the east. That has been shut all the time, so that the O. R. & N. and U. P. cannot solicit transcontinental freight to Puget Sound points via Portland and the N. P.

Through rates via N. P. and Shasta route.

Puget sound closed to O. R. & N.

(2693) A. B. GRAHAM.

Graham.

Has resided at Portland thirty years, and is engaged in Willamette River transportation. Has been connected with the Oregon City Transportation Company for 22 years. His boats run up as far as Corvallis. In times of high water as far as Harrisburg, about 26 miles farther. 15 or 16 years ago there were about ten boats running on the river. A year and a half ago the O. R. & N. ceased operating boats above Oregon City. They now run one steamer, called the "Ruth" to the paper mills there (2694) which handles only supplies to the mill and the output from the mill. Witness handles a few supplies to that mill, but none of its output. It is thirteen miles by river from Portland, and 15 by the S. P., 14 by Oregon Water Power & Electric Line. The S. P. doesn't reach the mill. They are in the locks and inaccessible even to a team. The product can only come out by boat. Before the merger, the O. R. & N. and S. P. competed for traffic out of river points, the hops and prunes.

Portland. Willamette River transportation.

Product of paper mill can come out only by boat.

(2695) Witness also brought down hops and prunes, and delivered them principally to the O. R. & N. The O. R. & N. allowed witness a certain fixed rate. Presumed you might call it a division of the through rate. Now the hops witness brings down go along when the shipper elects, either the O. R. & N., the Portland-Spokane, the N. P. or the S. P. (2696) There is not as much wheat produced in the Willamette Valley now as formerly. There is more garden truck. There has been an increase in the production of hops which are shipped chiefly to points in the east. It runs from 80,000 to 110,000 bales. A maximum carload is about 150 bales. The average about 75. They go to all eastern points—New York. They go to England; some to St. Louis, and some to Milwaukee. Cannot always navigate as high up as Corvallis. Has gone to Salem daily for the last fifteen years, 73 miles by water from Portland. Salem is a station on the S. P.

River traffic.

Of the ten boats on the river fifteen years ago, three were owned by the O. R. & N., witness had two, the Oregon & Pacific (later the Corvallis & Eastern) two, and the others owned singly. (2698) Witness is the only one of these boat owners now operating on the river. The two boats witness now has draw light 14 and 19½ inches respectively. (2699) The last trip of the O. R. & N. boats above Oregon City witness thinks was about a year and a half ago, but it may not have been that long. (2700)

Boats operating on river.

Fifteen years ago the boats depended largely upon wheat for their traffic off the river. Between the S. P. and the Willamette River, on the east bank as far north as Salem, is operated the Oregon Electric Line into Portland. It runs from Portland to Salem, and takes in all the French prairie country. Formerly, witness delivered only to the O. R. & N., but now delivers to any of the lines out of Portland, practically on equal rates. Rates are higher now than in 1900.

Paper mill traffic.

(2701) Prior to 1900 there was a flat rate of $2.50 a ton. Witness went on a transcontinental basis, in 1901 or 1902, he thought, and the rates are considerably higher. Witness operates two boats daily to Salem, and three times a week to Corvallis. Witness doesn't seek the traffic from the paper mills. It is in large, heavy rolls, and not enough revenue in it. As a rule, it is destined chiefly to San Francisco. (2702) What in O. R. & N. boats moves to Portland, goes out by the same Company's boats to San Francisco, and the Oregon City paper mills send some of it across the river in their own boat to Pulp, and that goes down on the S. P. The S. P. also hauls logs from St. Johns up to Pulp for the paper mill, and they are dumped into the River and floated across to the paper mill. Lack of river traffic has caused the falling off in the boats. Witness at the present time is hauling all the traffic he can get, without restriction as to routes, rates or anything else.

Cause of decrease in river traffic.

(2703) The cause of the decrease in river traffic is due to the improvement of the roads leading from the river bank to the railroad, to the better railroad facilities, warehouses, and also to the less production of wheat. The Willamette Valley formerly produced about 6,000,000 bushels of wheat a year, and now about 2,000,000.

Hops and wheat.

(2704) Witness thought fifteen years ago there were only ten or fifteen thousand bales of hops produced. In 1900 he thought about 80,000, and last year it was estimated at about 100,000. This year there will be 80,000 or less. From 1898 down to the present time, the production has fluctuated with the market demand, the average crop being about 80,000 or 90,000 bales. The Willamette wheat was milled into flour, and then largely exported from Portland. It was also exported from Yaquina Bay to San Francisco. The Willamette Valley now ships in small quantities of wheat from east Oregon for domestic consumption.

(2705) Flour still moves out of the Willamette Valley from the Corvallis mills to San Francisco. Witness handles part of that, in connection with the O. R. & N. boats, and part of it goes by the S. P. by rail. The river movement amounts to about 1,000 tons a year. During the last ten years other people than witness have operated on the Willamette River for a short time, but withdrew because the business was not profitable. This year witness has been shipping flour to San Francisco by the Northern Pacific Steamship Company. Previously by the O. R. & N. boats.

River traffic not profitable.

(2706) The S. P. has been carrying it also right along. The O. R. & N. retired from this ocean traffic about three months ago.

The North Pacific Steamship Company operates a regular line from Portland to San Francisco, with sailings every week, and has been engaged in business for three years, that witness knows of.

(2707) THAD SWEEK.

Sweek.

Portland. Formerly in O. R. & N. traffic dept.

Lives at Portland, Oregon. In 1888 entered the employ of the O. R. & N. in the engineering department. A year and a half later transferred to the traffic department under B. Campbell, the traffic manager. Three years later became city contracting agent. Now, for one year, in the real estate business, and for 2½ years prior to that engaged in salmon packing.

Hops.

(2708) The O. R. & N. and the S. P. competed for the hops in the Willamette Valley prior to the merger. (2709) After the hops were brought into Portland, they would be shipped east preferably over the U. P. They were also interchanged with the G. N. at Spokane. Witness was under the impression the S. P. sent their hops by the Sunset. They didn't work them over the O. R. & N. At that time the tariff rate on hops to the seaboard was $2 a hundred. That was about $4 a bale of 200 pounds. 50 to 60 bales was considered a pretty fair car. Take a large furniture or vehicle car, sometimes you can get in 100 bales.

P. & A. inbound traffic.

(2710) The Portland & Asiatic steamships brought in rice, tea, matting, lily bulbs, curios, silk, camphor, sulphur and jute. Their ports of call were Yokohama, Kobe, Moji for coal, and Hongkong —Shanghai only when there was a certain minimum, 500 tons probably, to go in. Witness didn't think that Nagasaki was a regular port of call, but only when there was a large engagement for that port. Mr. Cameron was the general agent for the Orient.

P. & A. outbound traffic.

(2711) The sailings were about once a month the first year. The boats were under charter, and carried no passengers. Outward bound they took flour principally, also wheat, barley, machinery, tobacco, cotton, cotton piece goods, and various other small items. The machinery came from points east of the Missouri River. The eastern agents of the O. R. & N., witness thought, were also appointed agents of the steamship line, and the latter had its own traveling men throughout the United States. (2712) A great deal of the cotton carried came from Texas and the south central states. From Texas witness thought it came up over the International & Great Northern route or the Frisco lines to Kansas City, or sometimes into Denver, and taken up by the U. P. there. Witness understood that cotton also moved from these Texas points to the Orient by way of the S. P. and Pacific Mail. Tobacco for the Orient originated principally in Virginia and moved westerly, as a general rule, over the U. P. from the Missouri River. Jute was the Pacific coast product, but lately the bulbs, matting, and such, went into the east and south. Sometimes traffic from the Orient was billed through, and sometimes it was rebilled at Portland. Mr. Cameron had authority to issue through bills of lading. The O. R. & N. tried

as far as possible to have control of the routing, to facilitate the loading, sending it out in train loads, in order to make better time.

(2713) It was sent east over the U. P. as far as practicable. Prunes and hops were the principal commodities brought in for eastern shipment by the Willamette River boats of the O. R. & N.

Mr. Campbell's meeting with freight solicitors.

After Mr. Campbell was put in charge of the S. P. business at Portland, as well as that of the O. R. & N., he called a meeting of the soliciting agents of both the companies, at which witness was present. (2714) That was the first witness knew of the U. P. acquiring control of the S. P. (2715) The instructions given at that meeting were that the O. R. & N. representatives were to work in a friendly way with the S. P. representatives. In other words, to work both roads as one system, to work for the greatest revenue for that system. The Atlantic seaboard was to go to the Sunset route, as far as possible without antagonizing anybody, and business west of Pittsburg and Buffalo was to move by the U. P. via Omaha. Witness thought Campbell had a letter from Mr. Stubbs before him at the meeting. The instructions which were given, as above, were contained in the letter.

P. & A. put on to handle flour and wheat.

(2716) The P. & A. had but one traveling man at a time. He was expected to cover the entire east. The steamship line was put on to handle flour and wheat and barley originating locally on the O. R. & N. Other commodities handled were comparatively small in volume. (2717) The space allotted to eastern shippers wouldn't have made up a third of the entire cargo. The eastern agents had to definitely engage their space twenty to thirty days before the sailings. Otherwise the local people were allowed to fill the boat up with flour. The east didn't, as a rule, average a third, but that much was allotted them, and canceled if not filled.

Instructions as to solicitation of traffic.

(2718) Local flour always had the preference. Mr. Campbell's instructions as to the "100% route" simply regarded solicitation. The route was not to be forced upon the shipper. Solicit by the longest haul, and take it any way a slice could be gotten from it. (2720) The O. R. & N. agents would let the Sunset agents get Atlantic seaboard business, if they could. That was a limited amount of business, and consisted chiefly of hops and prunes and canned salmon. That was about all; such articles as could be transferred to the steamer. It cost about fifteen cents a bale to haul hops out of the Willamette Valley to the boat lines in competition with the S. P. That would be in the neighborhood of $3 a ton. The

Rates on hops.

rate then was about $2 a hundred. Of course, refunds were made at that time. The rate was not over 25 cents a bale. Sometimes the hauling service was performed by the farmer, sometimes by the hop man.

(2721) And sometimes by an independent man. The rates had been as high as $2.20. They are now $1.50. In answer to the question that the effect of the merger was to cut out the cartage charge, and make a deduction of $10 a ton, "Well, of course, I don't know when this rate was made $1.50. I wasn't there then. This

other was cut out sometime before." Some of the hop business the O. R. & N. interchanged with the G. N. at Spokane. (2722) The G. N. had agents soliciting hops in the Willamette Valley, and traffic by Spokane was what they secured. The O. R. & N. worked the other way if they could. Prior to Campbell's talk, the O. R. & N. and S. P. took away from each other whatever they could. Portland distributes a large amount of tonnage from the east over a large amount of territory. (2723) The amount which was routed in the east changed as the so-called trusts were formed. The trusts usually routed their shipments. The other shipments were largely routed by the consignee. Witness thought that the American-Hawaiian boats do not touch at Portland now, unless there was some extra large shipment. They take shipments out of Portland by way of San Francisco. The reduction in the rate on hops occurred after the establishment of the American Hawaiian Line. That line was established before the witness left the Company in 1905, and the rate was put down after his departure.

American-Hawaiian line.

(2724) In soliciting on the street witness represented all the Harriman lines. Solicited for the Sunset route, but doesn't recall ever getting a car west-bound into Portland. Might have done so, but doesn't recall it, nor did he receive anything east-bound from Portland merchants. The Sunset into Portland was not a practical route for merchandise. (2725) Outside of hops and prunes, there was very little that moved over the Sunset route, except canned salmon. The time by the Northern lines into Portland is much shorter than by the Sunset. The great trouble with the latter was the time, and the transfer at New Orleans.

Sunset route not a practical one for merchandise into Portland.

(2726) THOMAS McCUSKER (2)

McCusker.

For sixteen years employed by the S. P. at Portland, and about a year as assistant general agent of all the Harriman lines. Remembers the war between the boats and S. P. from Portland to San Francisco. The rates, he thought, went from $2.50 to $5.00 by steamer, and $5 and $10 by rail. (2727) These rates were for first and second class respectively. The second class rail accommodation was a little better than a freight car, and included a berth, the first class a Pullman. The boat included meals and berth. The boat freight rate went down to $1 a ton, and the rail to 12½ cents.

Portland. Formerly asst. gen. agt. Harriman lines.

(2728) Witness thought there was always a regularly established differential between the lines when the rates were maintained. The competition wasn't as heavy without a differential. Witness didn't know whether the boats maintained rates or not. They had a system of rebates on sugar. Lumber moved from Portland to Salt Lake before the merger, usually over the S. P., and also moved by the O. S. L. The two roads competed. (2729) Witness has solicited both for Colorado points and Utah points, shingles from the Cowlitz River, which empties into the Columbia. Shingles moved also by the O. S. L. Before the merger, hops moved largely Sunset.

Lumber and hops.

All Atlantic seaboard hops went Sunset. The Cincinnati hops by Sunset and Gulf, that is, by New Orleans and Q. & C. or L. & N. Hops also moved to Cincinnati by the O. R. & N., O. S. L. and U. P. The line which is now the Corvallis & Eastern formerly ran in connection with boat lines to San Francisco from Yaquina Bay, and got a large part of the business to valley points, say, from Salem south. They had boats on the river, but witness didn't think they did so much business into Portland. As to business which they did from that point, it was competitive with the S. P. and the O. R. & N. and river boats.

Corvallis & Eastern.

(2730) The Oregon-Pacific (C. & E.) handled all classes of merchandise from San Francisco for stores throughout the valley. Remembers a carload of sulphur that came from the Orient to San Francisco, and then by the O. R. & N. boats to Portland, and via Huntington to the east. Witness thought the O. R. & N. had an arrangement with the U. P. that they were not to take business via Portland. (2731) Once when the U. P. and O. S. L. had trouble, the former worked by the Shasta into Portland. That lasted two or three months. The U. P. made extra time to Ogden. Witness remembered one car that was sent from Chicago to Portland in seven and a half days. The S. P. had a four day service from Ogden to Portland at that time. Witness was not positive whether the Sunset ever solicited business from Pittsburg to Portland. From Pittsburg west to Portland traffic came via Ogden and the Shasta. After the merger, the agents solicited Cincinnati business via the U. P. Lumber from Portland to Utah moved over the O. S. L. The divisions were taken out by the S. P.

Trouble between U. P. and O. S. L.

(2732) After the merger, the only instructions witness received were that the boat line was supposed to be separate, and they were not to solicit any business for the boat line, but if they knew of any business going against the boat line, of course, they would try to influence it that way. After the merger, witness continued to solicit for the S. P. rail line between Portland and San Francisco, but if they found anything going by boat, they were instructed to influence it to the O. R. & N. boats. Sweek's statement of Campbell's instructions is correct. (2733) All business west of Atlantic seaboard was to go U. P. The O. R. & N. boats had their agents actively soliciting, but if the S. P. agent couldn't get a shipment by rail, they were to try and turn it to the O. R. & N. boats. The carload of sulphur witness testified to moved about 1890.

Instructions as to solicitation of traffic.

(2734) The S. P. were investigating that shipment of sulphur, because witness understood that they had an agreement that that business would go the other way, via the S. P. to Ogden. Never heard of any other shipment going that way, except the one carload of sulphur. Never heard of any shipment moving locally from San Francisco to points east via Portland.

(2735) Hops, prunes and salmon were the only things that went over the Sunset from Portland east-bound. West-bound, all classes of merchandise moved, except buggies and wagons. After the

Sunset-Portland traffic.

merger, witness solicited all classes of Atlantic seaboard business via the Sunset. Some of it moved by the U. P., too. He didn't get more business, after the merger, by the Sunset than before. Business moved along in about the same channel. The principal-reason was time.

(2736) The volume of business moving by the Sunset didn't change to any appreciable extent as a result of the merger. Hops were bought up, so that at the time there were only four or five, certainly not more than ten, who were really large shippers. It was comparatively rare that the grower himself would undertake to ship. The S. P. had warehouses and mileage books, and forced the hop business via their own lines. Witness recalls the case of a grower, a Mr. Tate, of Hillsboro, who tried to move five cars by the N. P., and he was told to tell him to go to Hell, he couldn't get the cars. (2737) The S. P. wouldn't give him northern cars. They could have gotten them, but they wouldn't ask for them. That was in 1905. Cars were short that year. The buyers had warehouse privileges. They could ship in here to Portland and consolidate into carloads, and the locals were absorbed. That was also true of prunes for a while. They could ship in less than carload into Salem from Brooks, also from Independence, and could consolidate the two shipments and ship out on the carload rate, for the reason that there was a flat rate on hops from all points. Carloads and less were the same. Hops and prunes.

(2738) Sometimes the S. P. competed very strongly for wool, but from the Willamette Valley hops and prunes were the chief business, and that was about the only thing the S. P. could control, either before or after the merger. Witness thought the boats from San Francisco to Yaquina Bay ran for more than a year. The business to valley points was shipped from Albany. On steamer day the S. P. agent there was flooded. Yaquina Bay boats.

(2739) The boats were put out of business by advancing what witness called the "mileage tariff. The basis of rates from inland points was the same as from Portland, so far as the mileage was concerned, and they allowed the Oregon Pacific to ship via Yaquina and Albany at a lower rate than we shipped direct from either Portland or San Francisco." This competition was prior to 1901. Their business was knocked out when the S. P. raised the rates. It was before their receivership, which occurred in 1892 or 1893. After 1901, solicitation of business from Cincinnati to Portland by the Sunset was abandoned. (2740) Formerly as much hops for Cincinnati as possible was forced by the Sunset route, but since the merger they go U. P. Cincinnati is a pretty fair hop market, and there used to be active competition between the O. R. & N. and the S. P. for that traffic. Because of their bulky nature, witness wouldn't solicit vehicles via the Sunset. Witness wouldn't state positively whether vehicles had ever moved from Ohio by the Sunset, but his impression is that they had. Witness thought the Sunset Hops for Cincinnati.

route could get just as large cars as the northern lines, for the purpose of handling furniture, &c.

(2741) Witness thought there was a difference between the northern lines and the S. P., namely, a penalty in the shape of an additional charge was imposed on cars longer than 40 feet, which practically prohibited the business. The difficulty in the movement of large cars is not between Ogden and Sacramento. It is Sunset. Witness admitted the snowsheds might make trouble.

Baumgartner.

(2742) F. P. BAUMGARTNER.

Seattle. Steamship business between Portland and San Francisco.

Lives at Seattle, Washington. Up to two months ago was for eleven years agent at Portland for the California & Oregon Coast Steamship Company, operating a line of steam schooners between Portland and San Francisco, and way ports. There was no other regular line of steam schooners. The Company was organized in 1898, and operated one steamer on the run between Portland and San Francisco. An additional steamer was added about every year until 1903, when the Company had a fleet of nine steamers. Now it has only two. Two years ago steamer property was very valuable, and the Company had an opportunity to sell at a high figure, and sold. In 1898 or 1899 arrangement was made with the O. R. & N. Co. (2743) The latter subsidized witness' company to maintain their rates. That agreement continued in force until about 1903. During the agreement the rates were maintained. The way ports were Coos Bay and Humboldt Bay, commonly called Eureka. From the latter the principal traffic was redwood lumber and shingles. It was handled both to San Francisco and Portland. South-bound was local business for San Francisco, and east-bound business was handled by Portland. The O. R. & N. issued the through bills of lading from Eureka to the east. The S. P. had soliciting agents at Eureka, and endeavored to route lumber for the east from San Francisco. Lumber moved both ways out of Eureka. Witness had a local agent there, and the O. R. & N. traveling agent made occasional trips.

Coos Bay—white cedar.

(2744) White cedar lumber was taken out of Coos Bay, but no shingles. White cedar is peculiar to that region, and is used considerably in the east. It is shipped to the Atlantic seaboard, and also to Chicago. There were boats that were taking that traffic to San Francisco, the same as from Eureka. The S. P. then had no agents at Coos Bay, but have had for the past two years, since they bought the Spreckles line. That cedar business from Coos Bay began about four years ago, and has moved both by San Francisco and Portland.

Space leased by O. R. & N.

(2745) The O. R. & N. guaranteed witness' Company $1,200 a month, whether any freight was carried or not. They had the use of the space, and could load it or not, as they pleased. That was north-bound tonnage only. Since 1903 witness' line no longer maintain the O. R. & N. rates, but made a tariff of their own; (2746) and changed their tariff whenever it was necessary to

get the business. The O. R. & N. line carried freight cheaper than any outside line ever did. Since 1903 the O. R. & N. has competed more strongly for business than it did formerly, especially as to interior business. Prior to 1901, and subsequently, the rates from Eureka to the east have been equal either way. (2747) No change concerning that business took place after 1901 that made any change in the circumstances or conditions. (2748) Witness' line hasn't been operating to Eureka for four years now. The N. P. Steamship Company took their place, so far as Eureka is concerned, after they quit operating there in 1905. From Coos Bay witness' line is not operating south, but up to the time they ceased operating to Eureka in 1905, traffic could get there from or to the east, either way, at equal rates. Sometimes witness' north-bound business was heavier, and sometimes the south-bound. Coos Bay cedar was first shipped east in 1903 or 1904. (2749) The North Pacific Coast Steamship Company began to operate about January 1, 1905. In 1898 the O. R. & N. operated a couple of steamers, and witness one, or two or three, as the lumber business warranted. Since then the steam schooners which had been engaged in business carrying lumber south and merchandise up, have largely increased in number. The N. P. Steamship Company are operating two. In 1906 witness was operating three, four or five at different seasons of the year. The N. P. Co. had soliciting agents, but witness didn't until two years ago.

Eureka rates.

Increase in steam schooners.

(2750) Witness carried lumber south-bound and largely ran light north-bound. Took what merchandise he could get. In 1908 there were probably a dozen steam schooners carrying freight. In 1907 perhaps one or two. In 1906 witness doubts if there were any carrying north-bound freight. The lumber rates were too high to warrant anybody to engage in general merchandise cargo. They couldn't afford to lose the time required in loading, but since the lumber rates have gone down, there have been about nine schooners in addition to the regular liners engaged in trying to carry merchandise from San Francisco north to Portland, and at almost any old kind of rate. Since the contract of 1903 ceased, competition has been absolutely unrestrained on the part of the Harriman lines between San Francisco and Portland. During the past two seasons, the schooners have carried wheat in addition to lumber south-bound. Last year witness thought there were probably eight or ten, perhaps twelve, sailings a month by steam schooners north-bound from San Francisco, in addition to the regular lines.

Merchandise at any rate.

(2751) The regular lines had, the N. P. two, and the O. R. & N. two. In 1898 there were only two, the O. R. & N. and witness' line, and he was subsidized. Fear of the law, on the part of somebody, kept the subsidy agreement from being renewed. On Coos Bay or Eureka business, the O. R. & N. would take up witness' advanced charges, the same as connecting railroads, and collect them at the other end. On San Francisco business they absolutely refused to take up anybody's advanced charges, except the Port-

Payment of advanced charges.

land & San Francisco Steamship Company's. Therefore, unless the freight is prepaid to Portland, witness' line refused to carry it. The declination of the O. R. & N. cut them out of the business. (2752) Witness' line carried passengers as well as freight.

Hurlburt.

(2752) W. H. HURLBURT.

Portland. Formerly pass. agent of U. P. and O. R. & N.

Lives at Portland, Oregon. For the last three years engaged in damming the Clackamas River. Entered the railroad service in 1871 as passenger agent of the North Missouri Railroad, running between Kansas City and St. Louis, now a part of the Wabash. After eight months became traveling agent of the Burlington, in the west, for about a year, and was transferred to Chicago and remained there until 1876. Then went with the Canadian Southern. (2753) Was its western representative at Chicago for two or three years, and then general passenger agent of the road at Buffalo, remaining there until 1883. It participated in transcontinental business, and ran from Buffalo to Detroit, with a branch line into Toledo. It worked into Chicago in connection with the Michigan Central, making a through line from Buffalo to Chicago. At that time witness worked transcontinental traffic in connection with any route west of the Missouri River via St. Paul or Omaha or Kansas City. Through the latter gateway either in connection with the U. P. or the Atchison. The S. P. didn't then participate in that traffic. Later a line was established to San Francisco by way of El Paso. Witness was at Buffalo when that road was established. Most of the western roads then had agents at Buffalo. The S. P. didn't.

(2754) The passenger business moved to the coast by all the various roads mentioned. That was 1881 to 1883. In 1883 witness went to Chicago as the western passenger representative of the Erie, but then had nothing to do with transcontinental traffic. Worked between Chicago and New York. Was working east-bound from the transcontinental lines through to the Atlantic coast. The traffic that witness secured came in over all the lines from the south to the north. Remained with the Erie until 1890, and then went to San Francisco as assistant general passenger agent of the U. P., where his duties consisted chiefly in working the business east-bound over the U. P. The Sunset route was then operating to the east. The Sunset Limited train was put on later. Most of the passenger business to the Atlantic seaboard went by rail from New Orleans.

(2755) The S. P. and O. R. & N. were also competing between San Francisco and Portland. After remaining in San Francisco a year, witness came to Portland as the assistant general passenger agent of the U. P., in charge of the O. R. & N. local business, and continued there until the road went into the hands of a receiver in 1894. Then became general passenger agent of the O. R. & N. under the receivers, and continued as general passenger agent after the termination of the receivership, leaving in 1901. Had jurisdic-

tion over the boat line, as well as the railroad. While the business was decidedly competitive so far as the public was concerned, there was practically no competition so far as concerned the O. R. & N. and S. P. on east-bound business. The latter route was too long, the train service not good, and the expense too great. The practical competition was with the N. P. up to the time that the O. R. & N. connected with the G. N. at Spokane.

No competition between O. R. & N. and S. P. on eastbound pass. business.

(2756) The G. N. then secured considerable business, but witness naturally tried to work passenger traffic by the U. P. It was, however, always the custom to work in connection with the line that brought the business to your attention. That is true everywhere. As to the passenger business for San Francisco, the O. R. & N. agreed with the S. P. upon rates, a differential being given the former. Because of the infrequency of sailings, every five days, the boat line was not competitive with the rail line. At certain seasons of the year the boats were pretty well filled. (2757) Witness remembers the rate war on passenger rates between Portland and San Francisco. It lasted a year, maybe a little over. Rates got as low as $5, first-class, including meals and berth. Meals and berth alone cost $6, so that if a man rode on a pass, he paid a dollar more than if he didn't. The S. P. rates were as low as $10, including sleeper. Principal methods of securing traffic are advertising and soliciting.

Boat line not competitive with rail line.

Rate war.

(2758) The independent boats were not important from a passenger standpoint. The O. R. & N. boats carried from 225 to 350 passengers and stopped only at Astoria, making the trip from Portland to San Francisco in about sixty hours. (2759) The boats ran pretty full from April to November. The Willamette River boats brought passengers from Salem, Albany and Independence. These boats stopped anywhere on the River that you put up the flag. The independent boats were really not passenger boats, and their accommodations were very inferior. Carried only what would be called steerage passengers. (2760) The North Pacific Steamship Company's service is very much improved, and they now maintain a passenger ticket office in Portland.

Independent boats.

(2761) When witness represented the U. P. as assistant general passenger agent in San Francisco, he worked business east over the S. P., and thence either via Omaha or Denver. In the latter case the traffic went east either via Kansas City or Omaha. The S. P. was the initial line, and in any event witness had to work over the S. P. They furnished witness with their tickets, and he reported the sales to them. The S. P. worked closely with witness for that business. The Omaha-Ogden route was the shortest and best, and had the best through car service. The Sunset Limited was established after witness left San Francisco. The S. P. solicited business by New Orleans and El Paso, and via St. Louis. (2762) The bulk of the business out of San Francisco moved by Ogden, probably eighty per cent. From Portland the S. P. was not much of a competitor. It took a day and a half longer to go via Sacra-

80 per cent of pass. business out of San Francisco moved via Ogden.

mento, the time from Sacramento being as long as from Portland, and then there was the additional expense in the way of meals, etc. Very little, except round trip transportation, was sold that way. On passenger business the competition from Portland was entirely between the N. P. and U. P. The Sunset route was the S. P.'s preferred route.

S. P. didn't attempt to stop business going via Ogden.

(2763) The S. P. didn't have their new ships then. (2764) They didn't attempt to stop business from going from San Francisco to Ogden, but accorded the U. P. all possible privileges. The only through train service from Ogden was over the Chicago & Northwestern to Chicago. There was a through tourist car which ran over the Rio Grande, on special days, by the Burlington, and on special days by the Rock Island, but the regular service was over the C. & N. W. from San Francisco to Chicago.

(2765) A passenger can avail himself of just as many of these routes now as he ever could. In fact, there are more routes now. If the S. P. controlled the business, they would work it over their long line, the Sunset route.

Olwell.

(2766) J. D. OLWELL.

Medford, Ore. Fruit and real estate.

In the fruit and real estate business at Medford, Oregon. At present ships thirty to fifty cars a year. Before he sold properties he previously owned, he shipped from 20 to 100 or 150 cars. Has been in business there fifteen or sixteen years. Ships largely to New York and Europe. Crop consists of apples and pears. Ships some pears to Europe, but not so much. Apples move to Europe via New York altogether. Before the merger, traffic went to the Atlantic seaboard by Sacramento largely; now by Portland and the O. S. L. Practically none of it now goes by the Sunset. (2767) Some has been sent by New Orleans, but only where there was a possibility of disposing of it en route. Pears are billed to Chicago, and then possibly diverted from there. Shipments by the Sunset are usually billed to New York, with the idea of stopping wherever convenient. Has never shipped by the Sunset and water lines to New York. It is not ordinarily practicable. One car went that way by mistake six years ago. Shipments by water are too slow for perishable freight. Going south the fruit also encounters warm climates. Everything practically now goes to Portland and then east.

Routing of his fruit.

(2768) Never knew of the N. P. soliciting business. Medford is 300 miles south of Portland. No other line goes in and gets any of that business. The lines east of the Missouri River solicited. The only one of the northern lines who ever solicited was the D. & R. G., but they have stopped. Business is shipped both under refrigeration and ventilation, exclusively in refrigerator cars.

Route via Portland better than via Sacramento.

(2769) The route to Omaha or Denver is shorter by Portland than by Sacramento. Witness regards the Portland route as the most practicable way to ship. The time and the service are better. The distance is shorter, and you avoid the mountain grades. Doesn't

think there has been any change in rates since 1901. The rates are the same from Medford and as far south as Ashland, to the east, as they are from Portland.

(2770) Witness has used the D. & R. G., but the service was not favorable enough for him to continue. The D. & R. G. haven't solicited of late years. Witness thinks the Pacific Fruit Express cars are about equal to the cars he has been using in the past. For apples and pears the northern routes are more favorable than the southern, on account of climate. Shipments of pears are made in August and September, apples principally in October. It is a great deal warmer in the Sacramento Valley than by the northern routes. The time by Portland is quite an improvement over what it used to be by the south.

(2772) A comparatively uniform temperature is maintained in the refrigerator car, but a southern route requires more ice, and also the temperature in the cars increases. (2773) Witness is sure the time between Medford and Omaha is better now than before, but had not figured it out exactly.

(2774) W. W. WILDE.

Wilde.

Engaged in fish and cold storage business at Astoria for two and a half years. Previously chief clerk in the U. P. San Francisco offices. Employed by that Company for eighteen years. Attended Mr. Campbell's meeting after the merger, as a representative of the general agent of the O. R. & N. and U. P. at San Francisco. (2775) The instructions were to work with the S. P. more closely and harmoniously than they had done in the past. Witness didn't think they were given any specific instructions as to territory, but were to work the business as seemed most advantageous to the system taken as a whole. (2776) They were not to offend friendly connections.

Astoria. Formerly with U. P. at San Francisco.

Instructions as to solicitation.

(2777) Before 1901, the U. P. San Francisco agency worked much harder against the Sunset than afterward. Witness ships his fish and cold storage products from the Columbia River by the A. & C. to Portland, and thence over the O. S. L. and U. P. The A. & C. is the line that runs from Astoria to Portland, a part of the Hill system, the N. P.-G. N., the North Bank. The S. P. worked with the U. P. for business out of San Francisco via Ogden.

(2778) As against the Atchison the S. P. worked with the U. P. There is a good deal of business that won't move by the Sunset. From Ogden the business might go either over the U. P. or the D. & R. G. There were divisions both ways. (2779) Most of the eastern lines had agencies in California. All of them were working in connection with the S. P. by way of Ogden. The I. C. also had an agency in San Francisco, but not the other lines leading up from New Orleans.

S. P. worked with U. P. as against the Atchison.

(2780) J. H. KELLY.

Kelly.

Lives at Portland, Ore. From 1890 to 1907 in the employ of the O. R. & N. in Portland and out on the line. From 1894 to

Portland. Formerly in service of O. R. & N.

Boat service.

1901 chief clerk at the dock in Portland, in charge of the transfer of freight from the boats to the cars. The O. R. & N. had the San Francisco line and also the Willamette and Columbia River boats; also for a while steamers to Coos Bay. The latter handled lumber and shingles principally. Doesn't remember whether the lumber and shingles came from Eureka or Coos Bay. The boats called at both places, as witness remembers. (2781) The boats going back took small shipments of merchandise. The boats brought into Portland, hops, salmon, paper, shingles, pickled fish, and lumber. The Willamette boats went to Salem, Albany, Corvallis, McMinnville, sometimes as far as Eugene. A great deal of the traffic brought in from the Willamette Valley was carried on to San Francisco, potatoes, onions and paper. The prunes and hops went east all-rail over the O. S. L. The N. P. got some of it.

(2782) There was a five day service to San Francisco. Its frequency depended on the amount of traffic. For a while there was a three days service. There is now a seven days service. Sugar and canned goods, some merchandise, miscellaneous freight, was received from San Francisco by the boat line, destined to Montana points. It moved out of Portland via Spokane and the G. N., some via Wallula and the N. P., and some via the O. S. L. The boats on the Cowlitz River brought down shingles and potatoes. The latter went to San Francisco, and the former went east. (2783) The Cowlitz River boats were not owned by the O. R. & N. Boats also landed from Vancouver and other places. The three days sailings were in 1895 or 1896. The five days service continued most of the time.

(2784) Since 1897 the population and traffic in this territory has increased. There are probably 100,000 more people in Portland now than in 1897. The traffic from the territory tributary to Portland has also increased. About two years ago a bad accident occurred, in the loss of the "Columbia." Up to that time they had never lost a life. (2785) They also lost the "St. Paul," but prior to that for twenty years the line had never lost a vessel.

Loss of Columbia.

DuFlon.

(2785) P. F. DuFLON.

Portland. Formerly in steamboat business.

Lives at Portland, Oregon. Represents jute houses in Calcutta and San Francisco, at Portland. For four or five years, beginning in 1892, was in the steamboat business at Portland. The original name of his company was the George Dietrich Steamship Company. It was succeeded, to a certain extent, by the North Pacific Steamship Company, and that in turn by the California & Oregon Coast Steamship Company. At that time witness quit. They solicited general freight from San Francisco to Portland, and had a contract with the lumber mills to load lumber back.

Slump in lumber traffic.

(2786) The lumber business slumped, and the boats began soliciting general freight both ways. They didn't solicit passenger business. There was a rate war, and the rates went down to a dollar a ton. The boats lost money after the lumber contract was

lost. (2787) There was a conference with Mr. Woodworth, of the O. R. & N., and the subsidy contract was made that Baumgartner testified about. Mr. Doe took his boats up to Alaska, because he could make more money out of them, and that left witness without any boats. Witness would bring up freight that was destined to points on the North Pacific beyond Portland, but the O. R. & N. wouldn't accept freight, unless it was prepaid to destination. None of it ever went to Montana points. When the contract with the O. R. & N. was made, witness ceased to do business with the N. P. Settlement of rate war.

(2788) Freight only moved to San Francisco from points east of the Missouri River over witness' boats once. It came via the N. P. Witness' boat was five or ten days late, and the shipments had to go by an O. R. & N. boat. The amount of freight was uncertain. Never could tell anything about it. Didn't get business from points on the N. P. That was carried to Tacoma, and sent by the steamship line from there. The O. R. & N. made contracts with the large shippers to handle all their business between Portland and San Francisco. (2789) Almost all kinds of commodities were carried on the boats. The principal commodities were salt and sugar, California canned goods and leather. There weren't any steam schooners when witness started in. His boats were all very old boats, and carried 250,000 to 300,000 feet of lumber. Schooners are now operating that carry 750,000 to 1,000,000 feet. Freight from east to San Francisco by his line only once.

(2790) The subsidy contract originated with witness. It referred only to up-freight. They guaranteed $300 per trip, four trips per month, and had the privilege of taking the space. The up-freight wasn't very heavy, but the contract was made to stop the low rates, so as to get a decent tariff out of the business. It was a losing business all the time witness was engaged in the venture. The only time he made any money was when the dollar rate was in, and he shipped lumber under another name, on the O. R. & N. boats at that rate, and made money. (2791) The O. R. & N. didn't operate to Coos Bay in witness' time. He quit in 1896. Subsidy contract.

(2792) J. ALLEN HARRISON. Harrison.

Lives at Portland, Oregon. Assistant superintendent of the Vancouver & Lewis River Transportation Company, which runs one boat to Astoria and one on the Lewis and Lake Rivers, and one to Vancouver. Has been in the boat business at Portland since 1896. They bring in a very little salmon, also general merchandise, junk, fish, and shingles. The salmon is delivered either to the O. R. & N. or the N. P., as the shipper directs. Very little delivered to the S. P. The canneries directed the routing. The O. R. & N. Portland-Astoria boats also brought in the same kind of traffic. Their boats to San Francisco stop at Astoria. Portland. Boat business.

(2793) Before the merger, boats were running on the Yamhill River. Witness thought the O. R. & N. had a boat there, and Hosford ran a boat in there and Capt. Geer ran a boat. Yamhill River.

Doesn't think that the O. R. & N. has any boat there now. From the Yamhill, potatoes, hops, wheat and general farm products were brought in, practically the same as from the Willamette. About the Spring of 1903 witness' boats became a connecting line with the N. P. at Kalama. Their shipments coming from the east for down-river points then moved by the witness' boats. The O. R. & N. boats turned over their business to their own rails. The Vancouver Transportation Company has been operating boats on the Columbia and Willamette Rivers between Portland and Astoria since at least 1892. Witness sends out freight over the O. R. & N. or N. P. just as it is routed. (2794) No restriction of any kind is placed on his business.

Holman.

(2794) H. HOLMAN.

Portland. Boat business.

Operates a little passenger steamer on the Columbia River, and has been in the steamboat business at Portland for 22 years. For 21 years managed the business of the Kellogg Line, which ran up the Cowlitz River about 80 miles. The boats he now runs are small passenger boats. They carry no freight. Little rural milk boats. The potatoes the line brought down went to San Francisco over the O. R. & N. They were bought by dealers in Portland, and forwarded.

Cowlitz River.

(2795) The Cowlitz flows into the Columbia, 46 miles west of Portland. It is navigable for 45 miles about eight months in the year. The shingles that were brought in that way, not used locally, were shipped east via Salt Lake and Denver over the O. R. & N. or the S. P. The brokers in town handled them. The hops were shipped to the dealers at Portland. Witness has never delivered business to the N. P., either at Portland or at Kalama. The N. P. paralleled his route on the Cowlitz, and he hustled to get business from them.

Paulsen.

(2796) NICOLAI PAULSEN.

Portland. With O. R. & N.

Lives at Portland, Oregon. For the ten years ending March, 1907, witness was employed in various positions in the local freight office of the O. R. & N., at Portland, the last position being chief clerk on the Ainsworth dock. The O. R. & N. boats to San Francisco ran every five days. For about a year they have run weekly. At one time there was a dollar a ton rate to California. Witness remembers particularly that this was true on sugar. Perhaps salt was included. Doesn't remember any other commodity particularly. There was a special commodity rate of $2 on paints and oils for one firm in Portland.

Traffic carried between Portland and San Francisco by boat.

(2797) The line carried chiefly potatoes and flour to San Francisco from the rails to the O. R. & N. Not as much grain as mill feed. Occasionally had shipments of hardwood lumber from the Willamette Valley. A good many box shooks moved at that time. They also originated on the lines of the O. R. & N. at Bridal Veil, near Baker City. There were also box shooks from the factories

in Portland. The boats down the Willamette also brought hops which were shipped east. The dollar a ton rate witness thought was in effect in 1901.

(2798) The rates by water from San Francisco to Portland are cheaper than by rail. The competition is greater now than it was when witness was in the business. The North Pacific Steamship Company has regular sailings, and there are the outside schooners under the George J. Richardson people; two regular lines and a number of steam schooners. The steamers of the North Pacific Steamship Company are very much better steamers than the California & Oregon Coast had. (2799) They have good passenger accommodations, and their freight carrying capacity is larger. They have an office on Third Street, in Portland. They maintain their regular schedule well.

Outside steamships.

PORTLAND, OREGON, MAY 5TH, 1909.

Elmore.

(2800) SAMUEL ELMORE.

Astoria. Salmon canner.

For 28 years a salmon canner at Astoria, shipping all over the United States, and also abroad. Before the merger, all the coast companies, and practically all the connecting lines east, solicited his business. The N. P., G. N., S. P. and U. P. solicited. Witness shipped over all the routes to the Atlantic seaboard. Not very much by the Sunset. (2801) Shipments went by the Shasta, the Rio Grande, the U. P., and the Short Line; also over the N. P., going to Tacoma and Seattle. Sometimes connected with the G. N., sometimes direct to St. Paul. The G. N. traffic goes through the Minnesota Transfer. It reaches the G. N. over the O. R. & N. For a good many years witness has been as large a shipper as any other salmon canner; the largest for Columbia River salmon. Ships annually about 250,000 cases. A case consists of 48 pounds of one-pound tall cans. The rate to the Atlantic seaboard is sometimes $1, sometimes 75 cents. It is now 85 cents. It was made 85 cents after the Interstate Commerce Commission fixed it up, several years ago.

(2802) Salmon reaches the railroad by boat from Astoria. The O. R. & N. had a line, and the Vancouver Transportation Co. another. The N. P. took it at Kalama. The bulk of the salmon on the Oregon side moves by the A. & C. railroad, and on the Washington side by the two boat lines mentioned. Witness' business moves now practically the same as it used to do. In a majority of cases, witness routes his own traffic. Sometimes the customers do it. He divides his business pretty well. Formerly had a leaning to the O. R. & N., because they are closely allied with Astoria. Since the A. & C. came on, they have had their share. The Sunset was not the favorite line to ship over. Preferred the G. N., N. P., U. P. and Can. P. They were more direct. (2803) Witness can ship freight over the Astoria & Columbia River (which is controlled in the interest of the N. P. and G. N.) in connection with the U. P. Has noticed no change in his business since 1901.

Kollock.

(2803) FREDERICK N. KOLLOCK.

Portland. Freight solicitor for Pa. road.

For sixteen years solicitor for the Pennsylvania Railroad at Portland, Oregon. Solicits both freight and passengers. At first had the whole Pacific northwest, Oregon, Washington, Idaho, Montana and British Columbia. Now has only Oregon and Idaho. Solicits hops, lumber, prunes, all sorts of freight in the Willamette Valley. (2804) The S. P. endeavored to route their freight over the Sunset or the Sacramento routes, and the O. R. & N. into Portland by their boats. In high water the competition went up as far as Eugene. After the merger, there was no competition in the valley. Considerable wool moves out of the valley, but witness never worked the wool. What wool traffic he got was generally controlled by parties in Portland. Navigation was seldom open as far south as Eugene. The boats didn't go beyond Albany, except in exceptionally high water.

Wool.

(2805) In those days more or less traffic moved into Portland by the S. P., and out over the O. R. & N. Now Mr. Graham operates a boat line as far as Corvallis. Since the merger, there are no longer two sets of soliciting agents. Witness' facilities for getting business are substantially the same as they ever were. In securing traffic to or from the Atlantic seaboard, witness shows no partiality. He has two gateways, one at St. Louis, and Chicago, but is perfectly neutral on account of his connections. There is no change in the movement of traffic since the merger. (2806) Now the Harriman line sends the traffic whichever way equipment is supplied, and the general freight office decides. A good many hops go Sunset, and some come up to Portland and go east over the other lines.

Is neutral as between his Chicago and St. Louis gateways.

Crichton.

(2806) E. W. CRICHTON.

Portland. Boat business.

Since its organization in 1891, connected with the Columbia River & Puget Sound Transportation Company. Holds office of Secretary and Treasurer. From 1891 to 1903 they had a line of boats on the Columbia River between Portland and Astoria. Between 1901 and 1903 a line between Portland and The Dalles, and from 1892 to the present time a boat on Puget Sound between Seattle and Tacoma. The latter is a small boat that takes passengers across in a few minutes from one town to the other. Prior to 1901 witness brought salmon into Portland. From 1891 to 1903, when they sold out, they carried salmon to Kalama for the N. P. road. From 1894 to 1901 they made a contract with the S. P., and carried salmon for them. (2807) The salmon for the S. P. were picked up at Astoria and way points. It was delivered to the S. P. at Portland. The O. R. & N. carried their own salmon. The S. P. salmon was destined to eastern points, Boston, New York, Philadelphia, and some to New Orleans and Memphis. Witness thought also to Cincinnati and Pittsburg. He received $1.25 a ton for carrying it to Portland, and the railroad absorbed the steamship

Salmon traffic.

charge. Delivered salmon to the N. P. only at Kalama. Brought some pickled salmon to Portland once or twice for the N. P.

Cancelation of relations with S. P.

(2808) Complainant's Exhibit 161, page 2808, is a letter dated December 13, 1901, to the Columbia River & Puget Sound Navigation Company, from the S. P., canceling all arrangements for interchange of business. After that, witness delivered no salmon to the S. P. (2809) Witness' line solicited freight in connection either with the S. P. at Portland or the N. P. at Kalama. The O. R. & N. also had solicitors. The O. R. & N. had a line on the Columbia River, and also the Vancouver Transportation Co. had a boat.

(2810) The Vancouver Transportation boats didn't carry salmon at that time. They had no transcontinental connection. After witness sold out, they took his place, and carried to the North Pacific. Before that, they had no traffic connections with the O. R. & N. or the S. P., that witness knew of. The bulk of the salmon out of there moved in connection with the O. R. & N. or the N. P. The A. & C. Railroad was completed sometime in the 90's, and was in operation some time prior to 1901. (2811) That road carries the bulk of the salmon now for the N. P. They have side tracks into the canneries, and they took the Japanese section hands to help load cars, so as to compete with the deck hands on the boat, taking salmon off the floor of the cannery; so, after the construction of the A. & C., the competition was really keener than before. After the S. P. arrangement was canceled. the O. R. & N. boats handled the S. P. salmon. The A. & C. did business with all three roads. (2812) The effect of Exhibit 161 was to cut off the business from witness' boat line. It didn't affect the ability of the canner to send his business either way. He could then ship by the O. R. & N. boats to the S. P. rails, or by the A. & C. to the S. P. The U. P. and S. P. agents quit competing at the time of the merger.

McGuire.

(2812) HUGH McGUIRE.

Portland. Paper business.

Engaged in the wholesale paper business in Portland since 1892, the Pacific Paper Company. Before the merger, witness' business was solicited by the separate agents of the S. P. and O. R. & N. (2813) His fine paper he gets mostly in Massachusetts. Receives freight aiso from Wisconsin, Ohio and Michigan. Has shipped from Mass. by the Sunset. Has shipped also from the same region by the U. P. and O. S. L. Now he is solicited by the U. P. system, but not by the Sunset. At present a large part of his traffic is moving by the American-Hawaiian, that is, the Atlantic sea coast shipments from as far back as Ohio. Doesn't ship very much by the lake and rail connections. Divides it between the North Bank and U. P. Plays no favorites.

(2814) Doesn't want to ship by the Sunset route. The time is too long. Never shipped any great amount that way. Never moved anything on the Sunset route at equal rates. Ships over the U. P., N. P., G. N. and Can. P. The rail routes are all satisfactory

and furnish ample facilities. (2815) The Sacramento route and Sunset route do not appeal to witness. Uses the American Hawaiian because it is cheaper. If he were going to use water route, he would choose the American Hawaiian or the lakes. There is not as much personal solicitation now as there formerly was. (2816) There are not as many street men for the gateways between Chicago and Omaha and Minneapolis. At least, witness doesn't see as many solicitors as he used to. Is solicited by the Can. P. and N. P., and occasionally by the G. N., but doesn't ship much by the G. N. Doesn't recall ever shipping by Sacramento.

Nash.

(2816) WALLACE NASH.

Lincoln Co., Ore. Legal adviser of Ore. Pac.

Up to a year and a half ago lived in Portland, and previous to that in Corvallis. Now lives on a ranch in Lincoln County, 130 miles from Portland. Before living in Portland resided in Corvallis. Was 2nd Vice-President and legal adviser of the Oregon Pacific, the predecessor of the Corvallis & Eastern. A member of the English bar before coming to this country, fifty years in all. For thirty years a member of the bar of Oregon, ever since coming out here.

Route of O. P.

(2817) The Oregon & Pacific ran from Yaquina Bay to Corvallis, thence across the Willamette Valley to Albany, thence up along the Santiam Valley into the timber region of the Cascades, a total length of 131 miles. The line was platted entirely across Oregon, and the right of way secured across the state to a point called Ontario, on the Snake River, and some construction work was done at the east end, in the valley of the Malheur, and also in the passes of the Cascades, which governed the route. There is no line up the Malheur River now. There is one sixteen miles from Vale to Ontario, paralleling that river. The Oregon & Pacific construction work began about 1884 or 1885, and continued until about 1888. $200,000 worth of rock work was done in the canyon of the Malheur River. Where the construction work stopped, there was about a quarter or a half mile in the heart of the Cascades, which was the vital point of the pass. The rock work was done there, and about a quarter of a mile or so of rails laid there, to hold the pass. At the present time the road is in the heart of the timber region of the Cascades, and from that point to where it emerges from the timber on to the plain lands of eastern Oregon, the timber resources in the region are enormous.

Resources of country adjacent to road.

(2818) Between the point where the surveys emerged from the mountains on to the plain lands of eastern Oregon, to the eastern boundary of the state, there are about 675,000 acres of irrigable land, besides the dry farming land on either side, and the stock ranges. There is a very large amount of dry farming land. The surveys run for 200 miles through the stock ranges, and the yield of stock is not only very large, but can be increased almost indefinitely. Witness was connected with the operation of the Corvallis & Eastern until it went into the second receiver's hands

Corvallis & Eastern.

in about 1892. It at first was a friendly receivership, in 1890. In 1892 the receiver sold the road, and thereafter witness had no connection with it. It was purchased by Bonner & Hammond, of Missoula, Montana, for $100,000. Hammond operated the road for some years, and formed the Corvallis & Eastern Company. He sold out the majority of the stock to the Huntington Estate. Witness had some negotiations for the purchase of the stock up to the close of the year 1906 or 1907. (2819) It now forms a part of the S. P. system. They had not acquired it in 1906. Witness first heard of it when he was coming west from New York, where he had gone in an attempt to acquire the road. Witness thought the first steamship was acquired when the road was opened from Yaquina Bay to Corvallis, in 1887, and within a year two other boats were put on, so that there was a three boat service between Yaquina Bay and San Francisco. The boats were of considerable size. During the year 1888-9 the company carried 24,000 tons of wheat and other cereals out over the Yaquina bar, and there was a corresponding amount of incoming traffic from San Francisco. The incoming freight ranged from 80 to 200 tons a trip, the trips being every five days. The north-bound cargoes consisted of sugar, hardware, general merchandise, machinery, etc. There were large docks on Yaquina Bay that cost several hundred thousand dollars to build. Those docks are not there now. When witness first took hold of the affair, it was a harbor that had a low water depth on the bar of between 12 and 13 feet, with a rise of 7.6 feet.

Boat service.

(2820) An expenditure of $600,000 by the Government has increased the water on the bar at low tide to between 15 and 16 feet, and the main obstructions in the channel have been removed. Witness' company also maintained a line of three good-sized river boats to Portland. Two of them carried about 300 tons, and the other about 180, and that line was maintained during all the time that the railroad was operating on the Willamette River. They were new boats, built especially for the purpose, two costing $26,000 each, and the other $22,000. They connected with the railroad either at Corvallis or chiefly at Albany. The ranges in central Oregon that could be tapped by the C. & E. are both cattle and sheep. Probably from 100,000 to 130,000 cattle are driven every year from those ranges southerly to Montague on the S. P., and a large proportion, from a fourth to a third, driven east to Ontario and points on the O. S. L.

Boats on Willamette River.

(2821) Out of the 20,000,000 pounds of wool raised in Oregon annually in the last few years, about 17,000,000 pounds came from eastern Oregon, largely on those ranges. The sheep are sheared on the ranges, and the wool is largely delivered at Shaniko, where the wool sheds are the largest in any of these states. The wool is brought to Shaniko by wagon trains. It converges there from a very large area of country. The cattle and sheep are driven 150 to 200 miles, as a fair average, before they can reach a rail-

Wool.

road. The territory in there, without a railroad, is in the neighborhood of 300 miles each way, that is, east of the Cascade range. There is no other railroad penetrating the Cascade range from the west, leading into that country, except the S. P., which runs south. There is no west railroad, except the O. R. & N. at the extreme north. The C. & E. stopped some 25 or 27 miles west of the pass. There is no line of the S. P. penetrating that country from the west.

O. R. & N. branches.

(2822) The O. R. & N. has constructed several stub lines into the wheat regions of the northern tier of counties of the state, the Columbia Southern running south a distance of 71 miles, and another road that runs to Condon, which is farther east, a length of about 40 miles; also a line to Heppner. (2823) There is a road that runs from Baker City, the Sumpter Valley road, independently owned. It is a connection of the O. R. & N. There is a line into Tipton from Baker City. No other line penetrates the country witness has mentioned. Roads are now being constructed into the Klamath country, away to the west from the region witness is speaking of, but still giving these counties railroad connection. That Klamath line leaves the S. P. at Weed, Cal., and runs up somewhat parallel with the Shasta route on the other side of the mountain. The territory that witness spoke of, that is without a railroad, is entirely in Oregon. Witness doesn't know what became of the Willamette River boats. Thinks after Mr. Hammond bought the road, they were sold.

C. & E. steamship traffic.

(2824) The C. & E. operated steamships from 1888 to 1892. Upbound, they used to carry 80 to 180 tons of merchandise. Going down, they were generally full. Their carrying capacity was about 1000 to 1600 or 1700 tons. At the time of the receiver's sale, the Oregon & Pacific owned those three good-sized river boats, also an ocean going iron steamer, with a carrying capacity of about 1000 tons. (2825) Witness understood Mr. Hammond subsequently sold the steamer for about $40,000. Witness thinks her cost was considerably over $100,000. The length of the constructed railroad was, at the time of sale, 131 miles. There were good stations, equipment, and telegraph line. The sale included the uncompleted work done in advance of construction. The warehouses have disappeared at Yaquina, and the main dock is in such a dilapidated condition that witness didn't consider it a dock at all. Mr. Hammond didn't operate the steamship nor the steamboats for any length of time.

Cost of C. & E.

The bonds on the road amounted to a little over $8,000,000. The actual expenditure of cash at this end was $4,250,000 for the road and its equipment. (2826) The $8,000,000 covered the whole thing, but the $4,250,000 was the amount that passed through witness' hands in reference to the railroad, and didn't include the vessels. Mr. Blair and other rich men in the east owned the bonds of the road, and stated over their own signatures in "The Oregonian" that they intended to complete it.

(2827) During the friendly receivership, receiver's certificates aggregating something like $300,000 or $400,000 were accumulated. The road was first sold through Governor Hughes, of New York, who represented the bondholders, for $200,000, but the Court refused to confirm that sale, and it sold a few months afterwards for $100,000. The bondholders investigated the property, and declined to bid. The bondholders lost everything. They could never be got together, to make a purchase.

Receiver's certificates.

Bondholders lost everything.

(2828) Although Mr. Hammond was able to furnish money to construct the Astoria & Columbia River road, he didn't extend the Corvallis & Eastern, but sold off the boats and stripped the road, and sold a majority of the stock to the Huntingtons. They didn't extend it, either, though they held it to 1906. (2829) From 1902 to 1906 the property was in the hands of people who could have extended it, but they didn't. The elevation of the range country witness mentioned varies from 2000 to 2900 feet. The road runs through the depression, and is about 2000 feet. Harney Valley varies from 2000 to 2600 or 2700 feet in altitude. (2830) When the road came out of the mountains, it turned mainly south, and left Prineville off to the northeast. The character of country south of Prineville, extending east from 10 miles east of the Deschutes River and 10 miles south of Prineville, is broken and rough. There is no water on it. On some of the old maps it may be called the Oregon Desert. (2831) Witness' knowledge of this country discussed.

Topography of country.

(2832) The altitude of the pass through the canyon at the end of the Corvallis & Eastern is about 4700 feet. The grade from the end of the present road to the crossing was slightly over two per cent. There is a good deal of snow. The timber that witness testified about isn't peculiar to this section, but extends up and down the Cascade Mountains practically to the southern end of Oregon. (2833) The road penetrates that timber now, but its earnings have always been very limited. A large part of the timber is in the Government reservation. When the road was built, it was in private hands, and the timber could have been cut. Now the timber can only be cut through permission from Washington.

(2833) WILLIAM HANLEY.

Hanley.

Resides at Burns, Oregon, 350 miles southeast of Portland, (2834) 150 miles from railroad. Engaged in cattle business. His Ontario shipments, which are probably the largest, in association with M. K. Parsons, of Salt Lake, a combination trading account, run probably from 10,000 to 25,000, may be 30,000 cattle a year. Also ships some dry cows to Winnemucca, Nevada; that is, 250 miles from Burns. Ontario is 150 miles, and is on the O. S. L. Witness ships to almost every point north and east, some going to Canada, the Missouri River, Nebraska, Kansas, and formerly into Colorado.

Burns, Ore. Cattle business.

(2835) From Ontario the cattle go over the O. S. L. and U. P. At one time also over the D. & R. G. Ceased to have that privilege three or four years ago. Previous to that sold a good many cattle in Colorado. Some years we sold the biggest part of our cattle, especially cow cattle, there. The northern country is a special steer country. The northern grasses are really the only grass country that turn cattle off the range good enough to go to slaughter. Closing the Ogden gateway to the D. & R. G. cut off witness from that territory. The business varies with different years. Sometimes it becomes a fever with them, but Colorado was really a special country on she-cattle. (2836) Mr. Parsons supplied his own interests in Colorado, and some years has purchased as many as 10,000 cattle from Oregon for Colorado. Cutting off the D. & R. G. closed witness' cattle market to a considerable extent.

Routes to cattle ranges.

(2837-2842) Witness describes various feasible railroad routes into the ranges, and the character of the country. (2843) Whether the cattle lose weight, or not, in being driven a long distance, is a matter of time and skill in handling. Common stock cattle are apt to gain, while cattle fattened for slaughter would lose. There are no wheat raisers in that region. (2844-2849) Discussion of railroad building and character of the country continued. (2850) Since 1901 only the Siskiyou County Branch of the S. P. and the Ontario line have been built. (2851) The Arlington-Condon Branch was built in 1904 and the Pilot Rock Branch in the last two years, and the Vale Branch in the last four. The Ontario Branch is 16 miles in length, the Pilot Rock 16 or 18, the Condon a little over 40. The O. R. & N. have a whole lot of branches up in eastern Washington. Witness understood that those branches in Washington were built with Portland capital, although the country around Portland was neglected.

Branch lines.

Baldwin.

(2851) T. M. BALDWIN.

Prineville, Ore. Banker.

Has been for 22 years in the banking business at Prineville, Oregon. Owns some ranches about that place. (2852) It is 65 miles from the nearest railroad station, namely, Shaniko. It is 120 miles from The Dalles, which used to be the shipping point of that section. That part of Oregon consists of high tablelands and valleys watered by the streams. The products of the country are hops, wheat, barley, rye and vegetables. The country is principally devoted to stock raising, cattle, horses and sheep. There are some six million acres in the county. The stock is driven to Shaniko for shipment principally. Some are driven south. There is considerable shrinkage in driving cattle so far to the railroad. Witness thinks it would amount to 75 or 100 pounds per animal on fat cattle. There is considerable timber in that country, mostly yellow pine.

Products of interior Oregon.

(2853) Prineville is on Crooked River, 20 miles from the Deschutes River, into which it empties, the latter flowing into the Columbia. There are several irrigation projects in that country, but not by the Government. The Deschutes Irrigation Power Com-

Irrigation projects.

pany has about 300 miles of mains and laterals. They have almost 87,000 acres under water. Alfalfa, grain and vegetables are raised. A good deal of those lands have been taken up. The grain has to be hauled by team, if it is taken out at all, but doesn't think any grain is produced for export. Those lands are 70 to 80 miles from railroad. In the northern part of the county is a belt of land from which wheat is exported, but it is not under irrigation. That is dry-farming. There are upwards of 250,000 acres in that belt. The wheat is hauled to Shaniko and to Prineville, but all that goes out of the county goes to the former place. (2854) The hauling costs from 20 to 50 cents a bushel. Prineville is a place of 1400 inhabitants. The Deschutes Company has had their water on this land for the last two or three years. About 50,000 acres are under cultivation. Doesn't think there are 1000 acres in alfalfa under the Bend irrigation scheme. Everything that can be put into alfalfa is now in alfalfa, but there are several thousand acres additional that could be put under water. Alfalfa.

(2855) There are 25,000 or 30,000 acres in alfalfa in the Crooked River Valley. The land in the bottom sells from $50 to $100 an acre, and up at Bend the land is held at from $40 to $60. The land isn't cleared. It is covered with junipers and sage brush. This Bend country is about 3,500 feet in elevation. (2856) They are liable to have frosts every month in the year. The alfalfa is sold locally to feed stock, at from $5 to $8 a ton. An acre raises from five to seven tons, and costs about $1.00 a ton to put it in stack. At the head waters of the Crooked River there is quite an area of country that is devoted to stock raising, because of the natural grasses and alfalfa.

(2857) Between Agency Plains and Shaniko the country is broken some by hills, but the valleys are quite productive. The valleys are narrow. Shaniko is on a high plateau, 3,800 or 3,900 feet and drops from there down into the Antelope Valley, to 2,200 feet. The town of Antelope is six miles from Shaniko. (2858) The drop is in the last two miles. The country on the Shaniko hill is all unproductive. The last 15 miles of the Shaniko land is good for grazing only; too rocky for wheat. There are 20 miles of that character of country immediately south of Shaniko. Immediately south of Prineville is The Desert. Going west from Prineville, after you leave the Crooked River Valley, you go down 12 miles, and then climb up on top of the table-land, which is without water. Topography of country.

(2859) In addition to the Bend irrigation scheme, there is water on it on the west side of the Deschutes. The Squaw Creek Irrigation Company has redeemed about 10,000 acres, and the Columbia Southern Irrigation Company about 27,000. West and north of Prineville you run into the fringes of the Blue Mountains, after crossing The Desert. On top of the table-land you run into the Blue Mountains; a very broken country. Witness doesn't think the Condon or Heppner lines could be extended. Witness thought the most practical route for extending the O. R. & N. line would

be up the Deschutes. It is a rocky canyon about 135 miles long. (2860) And you have to cut your way out of rock most of the distance. It is a narrow, deep canyon, and in some places the rock rises 2000 feet, almost sheer up from the river level. The country tributary to it is not at all productive until you get to the mouth of Trout Creek, 80 or 90 miles up. Just east of the Deschutes River, the Columbia Southern runs parallel with the river 70 miles; practically covers all the wheat country; and west of the Deschutes River is the Great Southern Company, owned by Mr. Heinrich, which runs into the country about 15 miles, and taps the country which might be tributary to the Deschutes on the west. The line last mentioned is only 15 miles out of The Dalles. It is entirely inaccessible from Prineville. Land selling from $40 to $60 an acre would, under proper state of cultivation, be worth $100 near a railroad. The remainder of the 50,000 acres, of which witness testified 1000 were in alfalfa, are being cleared and brought under cultivation.

Products and transportation facilities.

(2861) Grain and vegetables are raised. The grain is too far from a railroad to export, and is fed to stock. Sheep are driven to the Columbia River. Most of them are shipped from Shaniko. There is quite an active demand for all the hay and grain raised. Sheep are shorn on the ranges, and some of the wool is hauled 150 or 200 miles. The hauling costs half a cent to one and a quarter cents per pound, depending upon the distance. The annual clip is three or four million pounds, and is hauled to Shaniko. The wool is raised in the territory extending from the Cascade Mountains to the Blue Mountains, and (2862) south to Prineville. The sheep go to the Cascade and Blue Mountains for summer range. The sheep are on foot practically all the time.

Wood.

(2862) C. E. S. WOOD.

Portland. Former army officer.

Came to the northwest in 1875, as a Lieutenant in the regular army, and since has been practicing law at Portland. (2863) As an army officer, witness campaigned all over the eastern part of Oregon and Washington. (2864-2866) Witness describes the country.

(2867) The Deschutes River has the most even flow of any river in the United States, and the greatest water power, many times more than Niagara Falls. It represents 9,000,000 tons of coal a year in power, and witness didn't think that ought to be destroyed by either irrigation or railroads, or anything else. (2868) There are at least four lines in eastern Washington, the N. P., G. N., O. R. & N., and the Can P. The C. M. & St. P. is also coming in by arrangement. From where the Harriman system forks at Granger, going to San Francisco and Portland, witness estimated there were fifty odd million acres, thirty million in Oregon alone, without railroad facilities. (2869) Witness' clients, Lazard Freres, of New York, Paris and San Francisco, for thirty odd years have owned 863,000 acres in Oregon. Location described.

Grimes.

(2871) WILLIAM GRIMES.

Marshfield, Ore.

Resides at Marshfield, in southwestern Oregon, on Coos Bay Harbor. (2872) The S. P. and the Oregon Coal & Navigation Company each run a boat to San Francisco, and the former, as well as the North Pacific Steamship Company, each run a boat to Portland. The "Eureka" also runs from San Francisco to Coos Bay, to Eureka and to San Francisco. Marshfield has a population of 5068. Its industries are coal and lumber, dairying, horticulture and agriculture. There is one railroad owned by the S. P. Co., running from Marshfield to Myrtle Point, on the Coquille River. The road under Mr. Spreckels was surveyed through to Roseburg on the S. P. A road is also partly constructed from Drain to Coos Bay.

Industries of Coos Bay country.

(2873) There are about 80 to 120 miles of partial construction, consisting more particularly of grades. The steel is laid only a mile or two. The partial construction took place in the spring of 1907. Since then nothing further has been done. No part of it is operated. (2874) Witness saw Mr. Harriman with reference to completing the road, and he said he would send somebody to report on the traffic possibilities.

Railroad between Marshfield and Myrtle Point.

(2875-2879) Complainant's Exhibit 162, a report by W. H. Holabird upon traffic possibilities for a standard gauge railroad between Drain and Marshfield, Oregon, made by direction of E. H. Harriman. (2879) Complainant's Exhibit 163, letter from Chamber of Commerce of Marshfield to J. Kruttschnitt. (2880) Complainant's Exhibit 164, Mr. Harriman's reply. (2881) Complainant's Exhibit 165, Chamber of Commerce's reply. (2881-2) Complainant's Exhibit 166, Mr. Harriman's reply. (2882-3) Complainant's Exhibit 167, Chamber of Commerce's reply. (2883-4) Complainant's Exhibit 168, Mr. Millar's reply.

Transportation facilities.

(2884-5) Lumber goes out of Marshfield mostly to San Francisco and to foreign points. Sailing vessels come in and take it to San Pedro and south. (2886) Dairying products are carried into Marshfield by gasoline launches. Nearly all the farmers own them. There are also some coal mines. The coal is carried out by steamer. The S. P. mine coal for their own use. There are other coal mines there that furnish the local market. There is a big coal field. (2887) The two lines mentioned are the most feasible, but witness thought there could be other lines from the S. P. to Coos Bay. Transportation conditions have improved since the Harriman people have purchased the railroad from Spreckels. The Drain-Coos Bay line was started in the fall of 1906 or the spring of 1907. Lumber was then considerably higher.

Lumber business.

(2888) They have been milling lumber for 20 or 25 years on Coos Bay, may be longer. That is the bulk of the tonnage out of Coos Bay. The country is heavily wooded, and it costs from $30 to $200 an acre to clear it. For ten or fifteen years past the tide lands that are susceptible of cultivation, have been used for dairying pur-

poses. After this road was started and well under way, the contractor failed. (2889) The construction company is going through the bankruptcy court.

(2890) Mr. Smith, who was talking to Mr. Harriman about building the road, owns between 100,000 and 200,000 acres of timber land, worth from $20 to $50 an acre, or an investment of from $5,000,000 to $10,000,000 of timber alone. Mr. Simpson also has a million or two in value. (2891) Mr. Harriman desired a four per cent. guaranty on the actual cost for ten years. (2893) The timber tributary to the main line of the S. P. now is more than enough to supply any prospective demand. (2894) The S. P. boat to Portland and San Francisco each runs once a week.

Flanagan.

(2895) J. H. FLANAGAN.

Marshfield, Ore.

For forty years a resident of Marshfield. The principal resources of Coos Bay are timber and coal. They claim 400 square miles of coal, lignite, in Coos County. It has been marketed now for fifty years, principally in San Francisco. They claim 70 billion feet of timber tributary to Coos Bay. (2896) Until recently the logs were all brought by river, and some by tide water. Now spurs are being built into the timber, and it is brought to Coos Bay over the Spreckels road. It is a great dairy region. Coos Bay has a population, including Marshfield, of 8,000 or 10,000 people. That includes the farmers, mill employes, and coal miners. Present condition of construction on the Drain branch described. Witness thought its construction was begun in 1905.

Products of Coos Bay County.

(2897) The Drain branch never secured any rights of way on Coos Bay. Witness understood one-tenth of one per cent. was the heaviest grade on the proposed road. Timber on the stump at Coos Bay is worth from $1 to $2.50 a thousand. $70,000,000 would be a conservative estimate for the tributary timber. The Elijah Smith Company owns about 100,000 acres, 40,000 of which is timber. Doesn't think the timber alone would be worth $1,500,000. That would include all their holdings. The C. A. Smith Lumber Company owns close to 200,000 acres. The timber on that alone is worth probably $5,000,000. (2898) The Simpson Lumber Company owns 30,000. Their holdings are valued at $1,500,000, including their mill. These three men at Coos Bay represent in timber holdings probably $8,000,000. The stumpage along the Columbia River is worth $2.50 to $3 a thousand.

Timber values.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR COMPLAINANT.

VOLUME VII.

SAN FRANCISCO, CAL., MAY 10, 1909.

(2899) FRED F. CONNOR. Connor.

Lives at Berkeley, Cal. Has been employed by the C. M. & St. P. at Winona, Minneapolis, and Dubuque, Iowa; next with the G. N. at San Francisco; then for two years with the C. M. & St. P. again; and from July, 1894, to February, 1898, general agent of the O. R. & N. at San Francisco. After that, with the Panama Railroad for six years. Now in business at 1148 Harrison St., San Francisco. (2900) After leaving the Panama Railroad, was freight traffic manager of the Pacific Coast Steamship Company until September, 1907. Remembers rate war between the O. R. & N. boat line and other boat lines, and the Shasta route, between San Francisco and Portland. In 1894 when witness entered the service of O. R. & N. the competition on the ocean was in the nature of steam schooners going north after lumber, that cut the O. R. & N.'s north-bound rates to Astoria and Portland, and a flat rate of $1.50 and afterwards $1 a ton, north-bound, was established to meet their competition. That continued for something over a year. McNeil, the receiver, visited San Francisco, and found that the steam schooners really needed a north-bound cargo on account of weather conditions, and that the kind of fighting they were doing was unnecessary, that they had to have the cargo anyhow, and the matter of rates cut very little figure. An understanding was reached, by which the schooners would take some north-bound cargo as ballast, to keep the schooner down by the head; regular rates on the ocean being re-established.

San Francisco. Traffic man.

Steam schooners cut north bound rates.

(2901) In the meantime, the Shasta route had reduced its rates, he thought, to $1.30 first-class. The S. P. had never taken any particularly active part in the traffic between San Francisco and Portland, and they made a level rate of 12½ cents per hundred

pounds all classes, with two commodity rates of 7½ cents on sugar and salt. 7½ cents a hundred is $1.50 a ton, as against the water rate of $1 a ton. The S. P. was notified of the intention to advance rates, but declined to change its rate, because of some unsettled differences with the O. R. & N. river lines on the Willamette River.

Settlement of rate controversy.

Finally the differences were settled, and the O. R. & N. advanced its rates to 45 cents scale of rates. Previous to the cut, it had been 75 cents. He thought the railroad rate was advanced to 51 cents, first-class scale, L. C. L., maintaining a differential between the rail and ocean line of six cents on L. C. L. and three cents per hundred on carloads. That differential was in effect when witness left the Company. Witness' recollection was that the railroad got very little freight during or prior to the rate war. Doesn't know how it has been divided since.

Railroad got very little traffic prior to or during rate war.

(2902) The trouble in the Willamette Valley between the S. P. and O. R. & N., which witness referred to, was competition between Willamette Valley points and Portland, and some on through to San Francisco. The traffic that came through to San Francisco was chiefly grain and potatoes.

Montana traffic.

(2903) The boat line carried traffic from San Francisco to Montana points in connection with the N. P., the G. N., and for some points via the O. S. L. This traffic was transferred from the boat at Portland, and again transferred at Spokane, Wallula Junction or Huntington. Presumes the S. P. carried business to Montana via Ogden and the Utah Northern. This traffic consisted of California products, like wine, dried fruit, sugar, and canned goods. The boat and rail lines had no differential on interior rail business. Rates were the same either way. (2904) Didn't know whether any of this traffic went by the S. P. to Portland and then over the N. P., but presumably it did not, as that was a circuitous route.

Boat passenger business.

The boat passenger business was heavy during pleasant weather. Witness thought there was a three days service when he first joined the Company, for a short time, and then it was changed to a five days service. The S. P. at that time had one passenger train a day. Passenger rates were cut during the rate war to $5 and $2.50 for first and second-class, respectively, by boat. The O. R. & N. boats stopped only at Astoria and Portland. The same rate applied from San Francisco to both points.

Cut rate only applied to through business to Portland.

(2905) The cut rate on the Southern Pacific passenger business applied only on through business to Portland—not to interior points. The passenger had to go to Portland to get his draw-back, or rebate. They publicly advertised that they would carry passengers on those terms. This was done as a method of protecting the intermediate business. Cannot say because of the rate war traffic moved from the interior locally either to Portland or San Francisco in greater volume than it did before, in order to take advantage of the reduced rates. (2906) Witness didn't think the differential that was established between the two lines was sufficient to pay the local in from some of the interior points, and

make the rates equal with the main line. Under objection that the tariff was the best evidence, witness stated that during the rate war the S. P. tariff stated that "the rates herein named are not considered reasonable or fair, but are forced by unreasonable competition on the ocean, and will apply between or to and from the points named only, and not to or from intermediate points." Some such clause as that. Transcontinental traffic moved at equal rates to San Francisco via the Pacific Coast Steamship Company, when witness was in its employ, in connection with the Canadian Pacific, the G. N. and N. P. The traffic consisted of general merchandise from Missouri River points and east, and flour and grain from the western points on those lines.

(2907) Traffic from New York reached the Isthmus by the Panama Railroad Steamship Line, at the time witness was employed by it, and came up the west coast over the Pacific Mail. There was a traffic contract between the Panama road and the Pacific Mail, under which the business moved. Panama route.

(2908) It was dated December 18, 1895, and ran for five years. Witness didn't see the later contract, but understood there was one, made in 1902. During the time the first contract was in force, the Panama route had a scale of class rates which was $1.80 first-class, and was forty per cent. less than the all-rail rate on the same kind of traffic. There were also a few special commodity rates. All other commodity rates were 20 per cent. on carloads, and 30 per cent. on L. C. L., less than transcontinental rail rates. The Pacific Mail received 45 per cent. of the through rate between San Francisco and New York, and the Panama Railroad the balance. There was very little cutting of rates, and then only to secure enough traffic to give the ships sufficient cargo. Rates.

"If running a little light out of New York, our people would make some slight reductions to attract a little more business. Eastbound, the Pacific Mail had the prerogative of making the rates, and no cuts were made from here east unless the same condition prevailed—that they were shy of cargo." Freight shipped from the east to San Francisco by the Pacific Mail and the Panama road during that time, consisted of general merchandise, iron perhaps being the heaviest—iron and oil; paper, groceries, canned-goods, hardware, books. They handled very little millinery and boots and shoes, but handled a great many pianos. The traffic eastbound consisted of California products, principally wine and canned goods. Character of traffic.

(2909) It was the duty of witness while connected with the Panama Railroad as Pacific Coast agent, to do whatever he could to advance the interests of his company. He had a territory reaching to the north as far as Vancouver and to the south as far as Valparaiso; he looked after the Central American and Mexican business, and business across the Isthmus. Used to go down to those countries once a year and make coffee contracts and other contracts, Territory served.

to secure the bulky freight originating at these points and to secure the traffic coming from Europe to those west-coast points.

The attitude of the Pacific Mail Steamship Company in reference to securing traffic for this route was fair. Their solicitor was in ill health when witness went with the company, and it so happened that their steamers from San Francisco were full with cargo offerings which he booked to the extent that it was not necessary for him to go on the street and solicit more business, because if he did, he would have more than he could carry; so he didn't go. The P. M. steamers from San Francisco carried freight destined to local points reached only by their lines, out of which they got a better revenue. They had a steamer every ten days, and witness worked very harmoniously with the P. M. people, so that he might get as much space on their steamers as he could. When the P. M. were getting more local traffic than usual, he had to be active to get that business for the interests of the Panama Railroad. The P. M. averaged about ten or eleven stops between San Francisco and Panama. Their schedule was made so that a steamer leaving on the 8th of the month would make certain stops, ten or eleven; the steamer leaving on the 18th would make certain other stops aggregating about the same number, and also the steamer leaving on the 28th. So that some of the minor ports to the south were served only about once or twice a month, while some of the larger ports were served by every steamer.

Pacific Mail service.

(2910) The first stop south of San Francisco was Mazatlan, Mexico. The reason why witness said he had some trouble in getting space was because at times Central American ports take quite a little traffic from San Francisco, in flour, and that fills up pretty fast, and the shippers of flour and sometimes of lumber, would anticipate quite a way and would get refusal of certain space. To offset that, witness was obliged to go after the wine shippers and get their orders in as far ahead as he could, to see that they were not shut out three or four days before sailing. The wine moved from here in about two seasons, for about two months moving freely. At other times waited for orders from New York to ship. So, when witness found that necessary he merely kept in touch with his shippers, so that he could take care of all the business they had to go, without having them shut out by the ingeniousness of flour shippers to Central American points. The P. M. boats had freight and passenger accommodations, and had been on the coast quite a while. The same boats are running still, except that several have been wrecked. The boats were probably 15 or 20 years old at the time witness was employed by the Panama Company. Presume some were even a little older. "They were considered good ships, good carriers, but were expensive to operate, expensive to load and unload." He thinks the P. M. have bought some boats, to replace the vessels that have been wrecked, but not new ones. At the time witness entered the employ of the Panama Company, the

P. M. averaged out of San Francisco, New York cargo aggregating 250 to 275 tons every ten days.

(2911) And 600 or 700 tons west-bound. In two or three years witness increased this average to 800 or 900 tons, east-bound, per trip, and 1200 to 2000 tons west-bound. West-bound freight would accumulate at the Isthmus, to be carried forward as the P. M. ships were able to take it, and at the same time reserve space for their local freight. Sometimes a ship would leave Panama for San Francisco with a full cargo of New York freight. At times, when freight was moving freely, it got ahead of Pacific Mail's capacity. Witness tried to induce the P. M. to put on more steamers, in order to keep up with the Panama Company. They finally did, under the second contract. Between the expiration of the first contract, in 1900, and the making of the second contract in 1902, witness chartered and operated vessels on the Pacific Coast for the Panama Railroad. He then had a sailing from San Francisco about every three weeks.

Nature of Pacific Mail traffic.

(2912) He carried barley and asphaltum. Once in a while was able to load a vessel full of that and send it down. Chartered vessels named. He carried large quantities of wool at that time, which previously had never been carried in any quantity to speak of; also rags and dried hides, bulky freight, which was not desirable for a small boat like the Pacific Mail to handle; light, but very bulky. That kind of traffic can be handled only to advantage with big carriers. You can store wine about six tiers deep without risk of crushing the lower tiers, and then you can only put light bulky stuff on top. There wasn't room on the P. M. steamers for the light stuff. After the P. M. service was re-established, they increased the number of sailings, so that they had one a week, so as to coincide with the Atlantic service, and that continued until witness left. He thinks there is a ten day service now. The second contract made no change in rates, except to abolish some of the commodity rates on such articles as wool and dry hides. Witness had made some very low rates to attract that bulky stuff, and in order to enable him to load the big ships he had chartered. When the P. M. went on, and witness operated under the second contract, that (2913) was no longer desirable. "Hops, for instance, are very bulky, very light stowage, and we abolished the rates in effect at that time for that purpose."

Rates.

Pacific Mail boats carried from 2000 to 3000 tons. The second contract established the same rates as the first, but the P. M. agreed to put in certain lower rates to help out witness in connection with matters to which he had committed himself. This indicated that a state of harmony existed. (2914) Witness remembers the transcontinental lines some time previous to 1893 rented certain space in the Pacific Mail boats for transcontinental business, but doesn't know the details. The Pacific Mail then operated on both sides of the Isthmus. (2914-2926) Exhibit 169, Contract dated June 11, 1902, between the Panama Railroad Company and the Pacific Mail.

(2926) The San Francisco merchants put on a line to operate in connection with the Panama Railroad Company in about 1893. A little over two years later, in 1895, it was superseded by the agreement between the P. M. and the Panama Railroad.

American-Hawaiian line.

(2927) The American Hawaiian line was instituted while witness was with the Panama Railroad. It took the place of the so-called clipper line of sailing vessels. These ships were steamers, and moved through the Straits of Magellan. The old clipper ships had gone around the Horn. Witness had left the Panama, he thought, before they established the Tehuantepec Line. The American Hawaiian ships at first stopped at San Francisco, but afterwards operated up to the Sound, because they had developed quite a little traffic from New York to the Sound, which previously had been turned over at San Francisco to connecting lines. They could also get their coal cheaper up there, and pick up salmon that was available for transportation to New York. (2928) Traffic via the Panama route destined to Portland and Puget Sound was transferred at San Francisco to the O. R. & N. boats and the Pacific Coast steamships, respectively. The northern boat lines got as their share of the through rate a percentage of the "west of New York proportion, subject to a minimum." In most cases it was lower than the local rates. Witness testifies as to difficulties he had in getting the P. M. boats to go up to the pier and take freight at Panama. They refused because they considered the wharfage charge too high. This was, however, only a short time prior to the termination of the five-year contract, and that put an end to the dispute.

(2929) When witness was connected with the C. M. & St. P., he noticed that the S. P. solicitors were never to be depended upon when he solicited transcontinental traffic in connection with them. That is the only way he has of knowing that they may have preferred the Sunset route. Under objection, as hearsay, witness said that, eliminating the Tehuantepec and Panama routes, the Sunset route carried most of the Atlantic seaboard business, while the more interior or western business originating in Chicago territory came by the Central Route. "It was understood that the Sunset Route catered more for the Atlantic seaboard business than any of the other transcontinental lines. It was (2930) a route over which they took special pains to make good time, and did make good time. While I was soliciting New York as well as other transcontinental traffic east-bound and west-bound, I ran against the strong competition of good service via the Sunset, which so far excelled the service that could be had via Chicago or other transcontinental lines that we really had to throw up our hands to the Sunset." That was in 1893 and 1894. (2930-2931) Soliciting agencies of various lines mentioned.

Good service on Sunset.

Lines that solicited traffic via El Paso or Ogden.

(2932) As solicitor for the C. M. & St. P., witness, worked with the U. P., and from Ogden over the S. P. The N. W. did the same. The Burlington and Rock Island worked more particularly with the

D. & R. G., as they had long lines to Denver, and thence via Ogden and the S. P. west. That is also true of the M. P. (2933) The Texas & Pacific worked via El Paso with the S. P. The M. P. worked southern California business in connection with the T. & P., because they were sort of family lines. (2934) The Rock Island had not then extended its lines to El Paso. With all these lines working for business which they had to deliver to the S. P., witness didn't know whether it was necessary for the S. P. to actually solicit business via Ogden. They were all working for their own lines, but incidentally had to give the business to the Southern Pacific. "We couldn't get around that." Witness understood that no lawful rate could be made to California without the assent of the S. P. The operation of the line on the Pacific coast by means of chartered vessels was unprofitable to the Panama Company.

They were all working to give business to the S. P.

A strike proved a very expensive factor. (2935) That is one of the chances you take in the operation of steamships. Did no coastwise business. None of the ships were wrecked. They made no intermediate stops. The line operated a year and a half. The boats described. (2936) The local rates were much higher than the proportion of the through New York rate. The O. R. & N. boats gave the American-Hawaiian Company better divisions than they did the Panama Company, and witness went to them to get it adjusted, and that is the reason he knows there were divisions in with the Panama Company, but he doesn't remember how great the traffic was. (2937) That was about 1900. In 1894, when witness was with the O. R. & N., he negotiated an arrangement for divisions on traffic from the Atlantic seaboard via Panama. The traffic was chiefly manufactured goods, and there would be from 20 to 75 tons, sometimes 100 tons, come in every ten days. The business moved to Portland mainly, and to Astoria. Sometimes a package would come along for an interior point.

Portland business via Panama.

(2938) The principal Montana common points would be Butte, Helena, Great Falls, Deer Lodge, and that territory. Most important local points along the line of the G. N. or N. P. were Missoula, Billings. The business from San Francisco to Montana common points moved both by Portland and the O. R. & N. to Spokane, over the G. N. and to Wallula in connection with the N. P. The O. S. L. was used mostly in the Anaconda and Butte business. When witness was connected with the O. R. & N., that company preferred to handle business via Spokane, because it got better divisions on its longer haul, but if they had run across business in connection with a N. P. man, would be loyal to him and work it his way. That is customary in railroad practice. (2939) Didn't know of any S. P. business moving to Montana by way of Portland. It went by Ogden. That would be the best route, but he has no positive knowledge as to the S. P. agent's instructions. What witness refers to as the Utah & Northern, was then a narrow gauge road, and is now a part of the O. S. L. from Ogden

Montana common points.

to Butte and other points in Montana. (2940) The S. P. could ship to Montana points via Portland and the N. P., but they get a larger revenue via Ogden, and better service, too, both shorter and quicker, and easier grades, witness thought. "Q. I believe you have testified on your direct-examination that the so-called war in rates between Portland and San Francisco commenced between the O. R. & N. boats and the steam schooners. A. Yes, sir. Q. When was that? A. I will say that the conditions of competition were very sharp when I joined the O. R. & N. in July, 1894, and found it necessary to make a great many reductions in our regular rates to meet that competition, and it was that continuous reduction and the issuing of special rate advices that caused the irritation and made it necessary to finally adopt, in a year or so afterwards, a flat rate of a dollar. Q. There were a good many of those steam schooners plying between San Francisco and Portland at that time? A. There were not. There were two. There was one for a while, at the beginning of my time with the O. R. & N. The steamer 'Truckee,' afterward the 'Alice Blanchard,' which is now the 'Chico,' I think, unless she has changed again, and solicitors or men working upon a commission basis with the (2941) owners of the vessels, had induced those owners to permit them to solicit cargo north-bound, and they agreed to carry it and deliver it and pay the expenses of loading and discharging and damages, if any, the solicitors getting a commission upon the amount of business they secured. We tried to get the steam schooners to desist from this character of irregular competition, because the solicitors had no interest whatever in the cost of transportation, merely taking the business at whatever rate they could get."

Rate war.

Irregular competition of steam schooners.

It is the north-bound merchandise carried by them that cuts any figure at all. At the time of this restoration of rates that witness testified took place in 1895, the steam schooners set up the condition of their north-bound traffic; that as the machinery was all in the stern of the vessel it left the bow very high, and they needed that cargo to bring the head of the steamer down so they could get through in a northwest wind; that it would be better for the vessel and better for the time, and that 100 tons would be sufficient perhaps to give her proper trim. An agreement was made between the O. R. & N. and the steam schooners whereby the latter would get that much cargo, and after that they got that much cargo. The schooners limited themselves to that quantity. They played fair, so to speak. They kept their part of the agreement. (2942) The water rates as between Portland and San Francisco were always fixed as the result of competition between the O. R. & N. boats and the steam schooners rather than as between the O. R. & N. boats and the Southern Pacific Railroad—they always were up to the time of that rate war. "The Southern Pacific prior to that, you know, never had, apparently, an eye open on that traffic. Q. Never ceased attempting to meet the water rate, did they? A. No, sir, their rate was $1 30, first-class, and they had no great number of

Agreed cargo for north bound schooners.

San Francisco-Portland rates always fixed by competition of boat lines.

S. P. did not meet water rate.

commodity rates in there. It was simply a tariff without any use for it. I understood at that time that they did not want that traffic, did not consider it desirable. And we never considered the Southern Pacific a competitor for that traffic until this rate war took place, and then, as I say, it came about through the Willamette Valley difficulty. * * * Q. And you don't know just what conditions were existing at the time? A. Nothing more than that the Southern Pacific, on account of the ocean war, probably saw their opportunity to line up and get a tariff in there at less than—well, it is a figure-head anyway. They were not carrying any freight before that on that line, and they didn't expect to carry any freight after that, but they were to be reckoned with and the restoration of rates would be their time to discuss the Willamette situation." The O. R. & N. never carried any considerable amount of freight between San Francisco and Portland in competition with the boat line. (2943) Their interest was mostly in the passenger way—not freight.

Cargoes of O. R. & N. boats.

North-bound, the O. R. & N. boats carried sugar, salt, canned goods, dry goods, groceries, general merchandise, and California products. All the year round they were less than the south-bound cargoes. During the winter months the cargoes were short, but the balance of the year they were full, going north. Grain and flour constituted the bulk of the south-bound traffic, also small lots of lumber, some iron, paper, and potatoes. (2944) While the Panama Company operated its own Pacific Coast boats, the Pacific Mail didn't exchange business with it. (2945) Under the second contract, the Pacific Mail got a fifty per cent. division, instead of a 45 under the former contract. There were divisions in with the O. R. & N. boats on certain traffic from the Orient to Portland via San Francisco, but not very much moved that way. Once a year there would be a bunch of it come along. The N. P. had divisions in with the S. P. from St. Paul to San Francisco, also from outside points like Fargo, Jamestown, and Grand Forks, and all through there. They took oranges up over that route. The O. R. & N. boats usually made better time between San Francisco and Portland than the freight by rail.

Divisions of N. P. with S. P.

Time of boat and rail service.

(2946) The boat time was 52 hours. The Shasta route freight took five, six or seven days. The railroad gave a daily service. "Q. You stated that previous to the rate war the Southern Pacific line to Portland had not figured in that competition for Portland business. How was it after the rates were adjusted? Did they carry freight traffic to Portland? A. I can't tell now of any material quantity of traffic that they carried, excepting such as would arise from the shipper in San Francisco having an order, for instance, for several little lots to go to points reached via Portland. His dray could load up and take at one trip to the Southern Pacific freight-yard enough freight to fill his dray and he would have half a dozen packages for Portland as well as for other points that had to go that way and couldn't go any other.

Carriage of freight by S. P. from San Francisco to Portland after rate war, merely incidental.

In that way there would creep into the Portland business a few packages. I get this from the fact that I would catch business going that way, and I would go to the shipper and find out why I didn't get it, and he would explain it to me that way—not that he intended to ship on the Southern Pacific to Portland, but it wasn't worth while to make a special trip down to the Oregon dock with it." (2947) Montana business handled by the S. P. always moved by way of Ogden. At the time witness left the O. R. & N. in February, 1898, though the receivership had ended, it was still independent of the U. P. (2948) When witness was with the G. N. in San Francisco, traffic moved there over that road from St. Paul; all classes of freight. It moved over the G. N. to Butte, thence over the Utah & Northern to Pocatello, and, if in carloads, in order to avoid transfer, it went east to Green River, then back through Ogden on account of the broad-gauge line that way. A year or so afterwards the line from Pocatello to Ogden was standardized, and it came that way.

S. P. handled Montana business via Ogden.

Toll.

(2948) H. G. TOLL.

San Francisco. Formerly clerk for S. P.

Clerk of the Western Pacific at San Francisco. (2949) Previously occupied various clerical positions with the S. P. The last four years of his employment, ending in 1905, was chief clerk in the general freight office. Previous to 1901, the S. P. endeavored to route Atlantic seaboard traffic, that is, from points east of Pittsburg, by the Sunset-Gulf route.

(2950) The S. P. moved business from the central states through New Orleans or via El Paso, also by way of Ogden. There is quite a large volume of business from Ohio moving by way of New Orleans. (2951) At that time the routing of shipments from the east to San Francisco merchants was controlled at San Francisco. Witness prepared a statement showing the earnings of the line west of New Orleans, in contrast with those west of Omaha. The purpose was to show by which gateway the greatest revenue would accrue to the Harriman interests. This statement was sent to the soliciting force, and they were instructed to send traffic over the route that would afford the greatest revenue to the Harriman interests. From New York the solicitation was always Sunset. (2952) Witness' best recollection is that from Ohio River points, Cincinnati and Louisville proper, the greater revenue was afforded by the New Orleans gateway, and north of the Ohio River there was greater revenue via Omaha.

Statement showing which gateway afforded greatest revenue.

Montana and Idaho business.

(2953) Competition between the S. P. and O. R. & N. was rather keen on Montana and Idaho business before the amalgamation, the former working both by Portland and Ogden, but chiefly by Ogden, and the latter from San Francisco by boat to Portland, and thence by rail. Their connection with the N. P. was at Wallula, and the G. N. at Spokane. After the merger, the rates west of Pocatello were materially advanced from San Francisco over the S. P. and Oregon Short Line. He thought they were not

changed from Portland. (2954) The substantial part of the S. P.'s Montana business moved via Ogden. The service was better and the distance shorter. (2955) Both before and since 1901, the S. P. has preferentially solicited Atlantic seaboard business via the Sunset. Prior to 1901, business originating north of the Ohio River moved chiefly through the Ogden gateway. As to business through Ogden, the S. P., witness thought, was neutral as between the D. & R. G. and the U. P. From points south of the Ohio River, the bulk of the traffic for San Francisco moved via New Orleans and El Paso. That was because the lines serving that territory had their long haul into New Orleans. Among those lines, for instance, were the L. & N. and the Q. & C. Route; they were the principal lines at that time. Those lines drew the business down to New Orleans instead of that same business being drawn through a northern gateway; (2956) because most of that business was tributary to their rails, and they in that measure controlled the routing of it. In other words, they were in a position to force the business that way. That was the natural commercial gravitation of the business. "Q. And then, since you prepared this tabulation, you say instructions were given to the Southern Pacific solicitors to employ solicitation in favor of certain directions. With respect to this business that originated south of the Ohio River, did the instructions to the Southern Pacific agents direct them to follow what you say was the line of natural commercial gravitation? A. They did." The conditions as to the movement of that freight north and south of the Ohio River are substantially unchanged—prior and subsequent to 1901—with the exception that the New Orleans gateway did handle a portion of the traffic from points north of the Ohio River. The substance of that traffic went through the northern gateway. The larger portion of it went through the northern gateways. That was the natural condition. The U. P. also solicited the Atlantic seaboard business actively.

Prior to 1901, business originating north of Ohio river moved via Ogden.

The lines serving territory south of the Ohio had long haul to New Orleans, and the traffic moved that way.

Business moves along natural lines.

(2957) Very little of the business from points south of the Ohio River moved over the U. P. They didn't make much effort to secure that business, except in territory contiguous to St. Louis. "They may have gone down into Kentucky for whiskey shipments, a short distance south, but they did not reach very far." The S. P. solicited business out of St. Louis via New Orleans, and the U. P. via Ogden. After the U. P. secured control of the S. P., there was a slight difference in the movement of freight from Central Freight Association territory, and a larger portion now comes through the Omaha gateway, whereas it was actively solicited before through the New Orleans gateway. The Central Freight Association territory is territory lying east of Chicago and East St. Louis, and west of Buffalo and Pittsburg and north of the Ohio River. The business originating along the lines of the L. & N. and the Q. & C., which was taken down to New Orleans through the influence of those lines, was the subject of solicitation

U. P. did little to secure business south of Ohio river.

by the S. P. agency. The consignees controlled the routing in very many instances.

(2958) Their routing was generally respected. The tabulation prepared by witness shows that in respect to points south of the Ohio River a larger revenue was derived by the U. P.-S. P. system where the haul was by the southern route. Witness has no personal knowledge of the extent and character of the U. P. solicitation of Atlantic seaboard business, but practically every line running west that does not belong to the seaboard is a competitor of the Sunset route. The Santa Fe is a competitor, the Rock Island and all the Iowa lines, and all the Western Association lines. The trunk lines from far east are competitors; from the Middle they are not so much so for the reason that their revenue into New York is about the same as if it came west. Ever since 1901 there has been an extensive, active, powerful, and keen competition by the all-rail lines against the Sunset-Gulf for that very business. In other words, that business has not ceased to be competitive because of the so-called elimination of the U. P. "Q. Now, assuming, provisionally, that the Union Pacific was a factor in the competitive struggle prior to 1901, any business resulting to the Union Pacific from its competitive efforts would be business enjoyed also by the Southern Pacific, would it not? A. From Ogden west, yes, sir." (2959) The U. P. could not make a price or a rate for that transportation without the consent of the Southern Pacific.

Competitors of Sunset.

U. P. could not make a rate without consent of S. P.

Transcontinental rates were made in meetings in which the S. P. was a dominant factor. Each line has to concur in the making of through rates. (2960) To get from Ogden to Omaha, the lines leading between those points had to agree with the S. P., so that the question of rates worked both ways, but more strongly the other way, because there was only one line west of Ogden and several between Ogden and the Missouri River. On business into Portland, the S. P., O. R. & N., N. P. and G. N. had a voice. In fixing a rate by El Paso, other lines like the T. & P. had a voice.

Graham.

(2961) ROBERT G. GRAHAM.

Oakland. Formerly Sunset solicitor.

Lives in Oakland. In the roofing-slate business for six or seven years. Previously solicitor for the S. P., the Sunset and the D. & R. G. Immediately before leaving the railroad service was for three or four years with the road last mentioned, and prior to that with the S. P., being six years freight solicitor for the Sunset route, and about five years as assistant at Market Street, San Francisco. Solicited traffic for the Sunset originating in New York, and also from California points to New York territory. (2962) His solicitation covered traffic originating in what is called New York territory; as far west as Pittsburg, perhaps, and New England. Witness solicited over the Sunset territory all rail, Cincinnati and south of the Ohio River. That traffic moved via New Orleans if they could get it. "We hauled whiskey from Louisville, you know; manufactures from Detroit," by way of New Orleans. Never

worked any business from Chicago via New Orleans. "Chicago and St. Louis were barred." We did not touch that territory at all. The U. P. was soliciting that business in competition with the Sunset, but the Atchison was the strongest competitor. Next to them, the central lines did most of the soliciting, the Milwaukee and the T. & P.—a bunch like that. By the central lines witness means those terminating at Omaha and Kansas City.

Never worked Chicago or St. Louis business via New Orleans.

(2963) H. W. ADAMS.

Adams.

Traffic manager of the Pioneer Fruit Company at Sacramento for the last year. Formerly commercial agent for the Rock Island-Frisco system since 1891. (2964) The S. P. worked south of the Ohio River, Cincinnati and Louisville, and those points, by New Orleans. Didn't work actively north of Cincinnati. "Of course there was some business that they would get from points north. * * * Occasionally there would be a car of some merchandise go that way, that probably was not solicited by them; simply routed that way by the influence of some one, probably the shipper, perhaps the consignee." (2965) A majority of the shipments from the east to San Francisco points were routed on the coast by the purchaser. Witness found the U. P. a strong competitor from points east of Chicago and up through Michigan. From Cincinnati and that region, the U. P. solicited the business, but witness didn't think they were getting a large share of it. A very small percentage moved from the seaboard all-rail, exclusive of the Santa Fe. The Santa Fe got a good deal of seaboard business all rail. Didn't notice any difference in the U. P. and S. P. solicitation in common territory after the merger. They were active all the time. Always have been. Would take business from any point they could get it.

Sacramento. Formerly Com. Agent for R. I.

No difference in U. P. and S. P. solicitation after 1901; always active.

(2966) The Rock Island-Frisco system had various gateways to California; through the Missouri River, the different Colorado gateways, and after the El Paso route was completed, in connection with the E. P. & S. W. through El Paso, also in connection with the T. & P. by Fort Worth. All this traffic ultimately reached its destination over the S. P. Witness had two lines, one to Denver and one to El Paso. The El Paso route was opened something like ten years ago. Northern California business was worked through the northern gateway, and traffic for Los Angeles and the southern portion of California through the southern gateway. (2967) It is a general rule with solicitors to work for the greatest revenue. Virtually all the competition for California business between the rail lines, outside of that between the S. P. and the Atchison, is between the connections of the S. P. east of Ogden and El Paso. These competing lines all turned their California business over to the S. P. either at Ogden or El Paso. All of those roads were competing with each other in the solicitation of the buisness. "The Union Pacific was a competitor of the Rock Island, and the Rio Grande and its connections outside of the Rock Island were com-

Rock Island had various gateways to California.

Competition for California business was between connections of S. P. east of El Paso and Ogden.

petitors of ours; the same way with the Sunset-Gulf route—it was a competitor of ours."

(2968) Such business as witness controlled at San Francisco for northern California would be sent through Ogden, and for southern California would be sent through El Paso, the service being better and the revenue, of course, better. His system in that respect was something like the S. P. He had two different gateways. Except that the S. P. had a very much longer haul by the Sunset than it could get by way of Ogden. And so far as the S. P.'s attitude toward this transcontinental business was concerned, it was a question of division or most revenue, as it was with witness. "It was a question of getting the longest haul we possibly could." Remembers that there was a blanket rate on oranges from California to Missouri River points, and all points east, of $1.25, and afterwards of $1.15 per hundred pounds. Some of the oranges moved through the El Paso gateway by the Rock Island to Kansas City and Chicago, and thence to the Atlantic seaboard. Some also moved through the Ogden gateway over the U. P. to Chicago, and thence to the seaboard. The S. P. made the same rate north and south. (2969) The U. P. didn't participate in earnings from traffic that went via the Sunset. U. P. couldn't make a rate to or from California without the concurrence of the S. P. (2970) But the S. P. could, independent of the U. P., with the concurrence of the D. & R. G. Doesn't see any reason why the U. P. shouldn't make a rate to San Francisco via Portland, without the consent of the S. P.

Mere question of longest haul with S. P. and R. I. both.

U. P. could not make rate without concurrence of S. P.

(2971) As between the direct rail line into San Francisco and the line via Portland and by boat down, witness said if the latter was dependent on his business, it wouldn't last. He never heard of any business moving from California to points east of the Missouri River by way of Portland and the U. P. (2972) Witness remembered that traffic had moved over the Canadian Pacific on a differential to San Francisco, but didn't know whether the amount was large or small. That is a longer line than via Portland. If the U. P. put on a differential by Portland, they probably would attract a certain class of business that way. That differential would naturally have the effect to put down rates all along the line. After the Can. P.'s differential was abolished it practically withdrew from that business.

Never heard of business moving via Portland route.

(2973) The Can. P. has no line south of the Canadian border. If the U. P. took business to Portland, it would then be as far from San Francisco as at Ogden. It is about 800 miles from Ogden to Portland. Witness doesn't see where the U. P. would gain anything by working the Portland route. It would be apt to bring about a demoralized condition. The S. P. could retaliate by diverting to the D. & R. G. any business they controlled themselves. Witness presumed that would be a natural thing for the S. P. to do. (2974) The consequent injury to the U. P. would be much greater than the benefit derived from working the Portland line. If the

U. P. would gain nothing by using Portland route.

rates were put down all along the line, the U. P. would thus make the S. P. suffer by the reduction in rates over the Sunset route. If a demoralized condition resulted, each company could hurt the other very much, so that it would be a foolish thing for them to do. The Sunset route is very much longer than the all rail line. The bulk of the traffic from New York goes that way, because it gives the better service, so, if the U. P. wished to work the line via Portland, they would "have to give the service or equal rates."

(2975) H. E. LOOSE.

Loose.

San Jose. Dried fruits.

For twenty years engaged in shipping dried fruit from San Jose. Ships from 100 to 400 cars a year. Atlantic seaboard business moves principally Sunset; some Santa Fe, and some U. P. From San Jose it reaches the Santa Fe at Stockton. It goes over the S. P. tracks to Stockton; (2976) also over the S. P. to reach the U. P. S. P. shipments moved Sunset-Gulf by way of Galveston. Of late years hasn't shipped anything via Ogden and the D. & R. G. Ten years ago shipped that way. It is now difficult to get cars that way. The difficulty arose principally after 1901. Witness was advised by the S. P. that unless he wished to have his fruit transferred, he could not get the equipment for that route if it was not available. Could not move a Harriman line car beyond Ogden, except over the U. P. Prior to 1901, both the U. P. and S. P. solicited witness separately.

Equipment.

Solicitation of his business.

(2977) The S. P. solicited via Sunset for Atlantic coast points, and all-rail for Pittsburg, Cincinnati and Louisville via New Orleans. The U. P. solicited via Ogden to all points east of the Missouri River. Witness didn't apply to the D. & R. G. agent for cars. He couldn't. Nor did he know that under the Harriman line pooling arrangement the payment of mileage was avoided, and that the cars of each Company were at home on the tracks of the other. When the S. P. accumulates a number of foreign cars, they force witness to load them, he thought, in order to avoid paying mileage and get the cars off the system. Not necessarily, but ordinarily, these cars are sent over the line that owns them. Occasionally witness has received orders to load D. & R. G. cars, and they go over the D. & R. G.

(2978) That is, the S. P. will send them that way, if ordered to do so. Often witness makes requisitions for D. & R. G. cars, and the S. P. says they haven't any. Witness cannot say that he was ever solicited by S. P. agents for Chicago shipments. "The S. P. and U. P. seem to say Ogden gateway, and if they have any equipment that way we load it that way." Prior to 1901, witness doesn't recall being solicited by the S. P. as to the route over which Chicago shipments should go, though he shipped a considerable amount to Chicago. Prior to 1901, he remembers the S. P. soliciting for Pittsburg shipments. (2979) Solely via New Orleans. Made considerable shipments to Pittsburg. Cannot say definitely he was solicited by S. P. agents for Pittsburg shipments from 1893 to 1901,

but it was during the early period. Remembers there was a time when the S. P. worked that territory strong.

Clifford.

San Francisco. Formerly with U. P. traffic dep't.

(2980) CHARLES CLIFFORD.

Lives in San Francisco. Was the last general agent of the U. P. at Cincinnati, and left when it was consolidated in July, 1901, after having been there a year and four months. Previous to that was for a year and a half at Butte, Montana, and previously, from 1902 to 1908, in Mr. Munroe's office at Omaha and Council Bluffs. After leaving Cincinnati, came to San Francisco. (2981) Business from Cincinnati to Portland went over the U. P. and the O. S. L. Practically all went via Omaha rather than Kansas City. To San Francisco the business went either via Omaha or Kansas City. Witness' territory at Cincinnati covered all the country east of the L. & N. line, part of Tennessee, and Indiana as far north as Indianapolis, from the gas belt, Muncie, Marion, and those places, and as far north in Ohio as Columbus; also in Virginia, part of Kentucky east of the L. & N., including Louisville, Lexington and Frankfort; also the State of Tennessee. General merchandise moved west to California from those points, chiefly carload shipments.

Not much traffic for U. P. south of the Ohio.

(2982) The territory south of the Ohio is not very productive for the U. P. Whiskey was the largest commodity. There was also considerable tobacco. A considerable part of the traffic from south of the Ohio River, destined for the Pacific coast, moved by Kansas City and St. Louis. From Louisville, whiskey and a great many wagons were shipped. That business was pretty well divided between Omaha and Kansas City gateways. Points north of the Ohio shipped vehicles, machinery, and from Cincinnati, a good deal of whiskey and different kinds of glass articles.

East bound traffic from coast.

East-bound traffic from California or Oregon consisted of dried fruit, canned goods, beans. Hops also moved to Cincinnati from around Portland. (2983) Hops moved O. R. & N. and O. S. L., U. P., C. & N. W. or Milwaukee, or C. B. & Q., any line into Chicago. Out of Chicago over the Big Four, Pa., or Monon. The S. P. agent at Cincinnati was also soliciting. Didn't think the S. P. agency at Cincinnati covered quite as much territory as the U. P. agency. The S. P. agent solicited via New Orleans.

(2984) From Marion and Muncie and Gas City a great deal of glass moved. Columbus is quite a vehicle town. Dayton is a manufacturing town. The rates were the same from this territory both over the U. P. and S. P. After leaving Cincinnati, witness was for five years agent of the U. P. at San Francisco. When witness first came to San Francisco in August, 1901, the business through the Ogden gateway as between the U. P. and the D. & R. G. east of Ogden, was divided about 35% to the U. P. and 65% to the D. & R. G. These divisions were due to abnormal conditions. The U. P. was maintaining rates, and the D. & R. G. was not. After the rates were put on a parity, the U. P. led. (2985) The S. P. favored the U. P. at Ogden. The U. P. general agent at San

Division of business at Ogden as between U. P. and D. & R. G.

Francisco was the claim agent. That had been the case for years, in order to put the U. P. and S. P. on the same basis. Settling claims promptly made the U. P. stronger. The S. P. was then routing its business as far as it could via New Orleans. Witness states that he has seen the circular showing the revenue accruing west of Omaha and New Orleans on all rail business, with instructions that business be solicited through the gateway giving the Harriman lines the most revenue. "Q. Will you state what it was as far as you remember? A. It took the rates from—I think the minimum rate of 50 cents to the higher rate, showed the revenue accruing west of the various junction points. That is all there was to it. Q. Applying by the different routes? A. Yes, sir."

(2986) Witness saw it in San Francisco and had a copy of it in his office. When witness represented the U. P. at Butte, the S. P. had a traveling freight agent there. The O. R. & N. had an agent there. The S. P. man worked east-bound California traffic into Montana, and the O. S. L. man worked coast business as well as eastern business. There was quite a tonnage from San Francisco to Butte. The principal distributing points in Montana to which the same rates apply from San Francisco are Butte, Helena, Anaconda and Deer Lodge. The traffic reaching those points from California was chiefly sugar, also canned goods, beans, dried fruit, citrus and deciduous fruits. Solicitation between the two agencies was then very active. The S. P. moved the traffic preferentially by Ogden, but also via the Shasta route to Portland, and the O. R. & N. to Wallula Junction with the N. P.; also via Huntington and the O. S. L. (2987) The O. R. & N. naturally from San Francisco worked their boat line. They had to, to get their share of the business. They took the long haul on it to Huntington or to Spokane. Divisions were in through all those various gateways while witness was at Butte.

Montana business.

(2988) At St. Louis and Kansas City there were other lines that could take Pacific coast freight to its destination without passing it over the U. P., namely, the Santa Fe, the Missouri Pacific in connection with the Santa Fe to Pueblo, or the Rio Grande and the Ogden gateway with the S. P.; the Rock Island by El Paso; the Burlington to Denver; several lines. Or the freight could go southward out of Louisville or Cincinnati over the Q. & C. or the I. C., or the L. & N. to New Orleans. It was competitive traffic, and assuming the entire elimination of the U. P., it would still remain highly competitive. The St. Paul and Burlington were soliciting freight from those points. From Cincinnati freight over the U. P. moved Chicago and Omaha or Peoria and Omaha. Excluding the U. P., it could also move by the Santa Fe from Chicago or Kansas City, or the D. & R. G., the Burlington, Rock Island and S. P.; also the Missouri Pacific.

Lines to coast from St. Louis and Kansas City.

(2989) The competitive territory above referred to, assuming the U. P. was eliminated altogether, would still be gridironed with competitive lines. Any of this competitive business passing over

No business went via Portland route.

the U. P. must pass over the S. P. to San Francisco, or to points south of Portland. None of the business went via Portland and the boats down. Witness was not instructed to solicit business that way, and there were no rates and divisions that way. Witness was for about 25 years in the service in San Francisco, Cincinnati and the general office at Omaha. During those 25 years knew of no solicitation of business from this territory north and south of the Ohio River, via Portland and the boats to San Francisco. Knew of no business going that way, except an occasional car that was misrouted. (2990) That was not a natural or practical railroad route. The Pacific Coast Steamship Company handles business from the east by Seattle and Tacoma, but not by Portland. Witness knows of no physical reason why business couldn't be handled via Portland and the O. R. & N. boats, as well as by Seattle and the Pacific Coast Steamship boats. The Portland route is just as practicable as via the Can. P. and by boat from Vancouver. Wouldn't care to ask a friend of his to ship from Chicago to San Francisco by Portland at even rates, but would if there were a differential in effect. There is a large traffic moving from the Atlantic seaboard to points in the middle west, moving by boat and rail during the open lake season, at a lower rate.

Not a practical route.

Traffic via the lakes.

(2991) That business is actively competed for by the all-rail lines as against the boat and rail line. A large traffic into Puget Sound is carried through the lakes in the open season. There are much heavier boats on the lakes than the steamers between San Francisco and Puget Sound. There are lots of boats on the lakes engaged in traffic in connection with the rail lines out of New York, handling a tremendous tonnage. Witness didn't know how the amount of business handled by the Can. P. on a differential compared with the all-rail business through Ogden. The traffic via Vancouver was eliminated when the differential was withdrawn. (2992) Witness meant the territory east of Chicago and St. Louis was gridironed with railroads, not the territory west.

SAN FRANCISCO, CAL., TUESDAY, MAY 11, 1909.

Havens.

(2993) C. R. HAVENS.

Berkeley, Calif. Dry goods.

Lives in Berkeley, Cal. Vice-President of Murphy, Grant & Company, wholesale dry goods dealers. Buy their merchandise through New York office and wholesale into California, Oregon, Washington, and a little in Idaho, Arizona, New Mexico and Nevada. Bulk of the business comes from New York via the Sunset-Gulf Route. Has been in the business since 1878, and thinks they have used the Sunset route from the time it was established. The Sunset route was established in 1883. Prior to that, witness wasn't familiar with the traffic. Latterly he has shipped some by the Tehuantepec line. (2994) It takes them about 45 days from New York. The Sunset about 18 days. Witness'

Uses Sunset route.

traffic from the middle west comes all-rail, but from New York the Sunset is witness' route. Has also used the Panama route in connection with the Pacific Mail. Doesn't know whether the latter has solicited the business or not. The New York office does the routing. Witness presumes his shipments to Portland move both boat and rail. The consignee routes it. (2995) Shipments to Boise move by way of the O. R. & N. One or two shipments up into southern Idaho went either by Portland or by Ogden, whichever way a saving could be made. There were only one or two shipments witness recalled where he had to figure anything of that kind. Couldn't say whether any of his traffic to Boise had ever moved by Ogden.

(2995) A. L. SCOTT. Scott.

In the hardware business at Burlington, Cal., (2996) since 1882. Imports from Pittsburg and the seaboard; also considerable from Chicago and that region, and as far west as St. Louis and Iowa; chiefly, however, from Pittsburg. Wholesales into California, Nevada, Oregon, Washington, the western part of Idaho, from Boise City west, and the western half of Arizona. Brings goods from the seaboard and Pittsburg territory by all-rail, by Tehuantepec, Panama. Has shipped largely by the Sunset route in previous years. All-rail shipments over the Santa Fe, the S. P. and the Gould lines. Has shipped over the U. P. via Omaha. Has shipped from Pittsburg and Cincinnati via New Orleans, all-rail. Burlington, Calif. Hardware

(2997) The rate via Panama fluctuates automatically with the all-rail rate. There is an agreed differential. That has been true for some time. Witness doesn't know how long. Thinks it went into effect after the change in the Panama route took place. The Pacific Mail runs on the Pacific side and the Government steamers on the other. The boats of the former are generally called a lot of tubs. There is no comparison between them and the ships of the American-Hawaiian line. The latter are first-class, up-to-date, cargo, oil-burning ships, with proper facilities for handling cargo. (2998) Witness' traffic is solicited at the other end, and witness doesn't know anything about it. Previous to 1901, the S. P. was anxious to get business via New Orleans, and the U. P. over the other route. Has shipped from Chicago by way of New Orleans via the Illinois Central. There never was any great tonnage moved that way, because witness didn't buy a great tonnage in Chicago. The products that moved that way were carloads of freight that came from the Chicago territory. Has shipped to Boise via Ogden. Did so at one time largely. Back in 1893 used to ship everything by Ogden. Afterwards the tariff was canceled, and witness had to ship by Portland. Panama rate fluctuates automatically.

(2999) Witness took his drummers off that territory, as it was unprofitable. Now ships from Boise west. Traffic to Boise and vicinity goes by water to Portland, and that rate was not met by the Ogden route, but the tariff over the latter was canceled. To the Idaho business.

best of his recollection, the rate was the same either way, and the tariff via Ogden was canceled in order to move the freight by Portland. The rates between Portland and San Francisco are higher now than formerly—now twenty cents, where it used to be 15½c. The rates were raised the 1st of April of this year. Witness' impression is that the Panama Railroad is opened up to any ships on the Pacific that will take a cargo, but a merchant cannot wait for tramp ships.

(3000) The Panama Railroad also interchanged business with foreign ships operating on the Pacific coast, which carried business between foreign ports. Witness thought the American-Hawaiian ships carried from 5,000 tons up, many of the vessels carrying 10,000 tons. Their average tonnage to San Francisco is 5,000 tons each. The tonnage of the Pacific Mail here per month, with all their vessels, is something like 2,400 or 2,500 tons. The Ogden tariff was canceled, to the best of witness' recollection, five or six years ago. (3001) The Pacific Mail carries all the tonnage that the Panama Railroad Company gives to it. The American-Hawaiian Steamship Company is a through line from New York by the Isthmus of Tehuantepec. The eastern ship unloads at Salina Cruz or Coatzacoalcos. The freight is then taken across the Mexican Railroad at the Isthmus and the American-Hawaiian ships operate on the Pacific side also. They operate boats on both sides and have a lease from the Mexican Government to carry their tonnage across. (3002) With regard to the S. P. tariff that was canceled, witness meant to testify that the S. P. tariff via Ogden into Idaho had been canceled. "In connection with the Short Line from Ogden up, and in connection with the O. R. & N. out the other route via Portland, with the Short Line from Huntington over to Pocatello." Couldn't say whether that cancelation was after the consolidation of the U. P. and S. P. traffic departments.

American-Hawaiian line.

Cooper.

(3002) J. H. COOPER.

San Francisco, Ass't. Manager Pac. Coast S. S. Co.

Assistant manager of the Pacific Coast Steamship Company at San Francisco, since 1907. (3003) Prior to that was general freight agent from 1902, and connected with the line since 1887. At one time the O. R. & N. boats sailed every five days. Now the sailings are every seven days. His line doesn't make Portland.

Ports served.

The ports of call are Puget Sound ports, including Victoria and Vancouver, British Columbia, southeastern Alaska, Nome, in its season, St. Michael, Mazatlan, and the gulf ports—Mexico to Alaska, including all the larger ports on the California coast, San Francisco, San Pedro, Eureka, and San Diego. Mazatlan, Mexico, is his most southerly port. At the time of the rate war, his Company was operating a boat from San Francisco to Portland, really under the management of the O. R. & N., so far as traffic was concerned.

(3004) The O. R. & N. had the management of that boat (the "State of California") for over ten years. She was one of the two

boats witness previously spoke of as operated by the O. R. & N. Doesn't recall that the O. R. & N. had extra boats. Thinks during the war rail rates were cut to 12½ cents, possibly 10 cents. At the same time there was rather a demoralization in ocean rates to Puget Sound. The Pacific Coast Steamship Company was cutting rates on occasional steamers against steam schooners, and it didn't affect the rates to Puget Sound really at all, except on interior business. On the latter, the Puget Sound lines had to equalize the rates via Portland. That continued during 1895 and a portion of 1896. Transcontinental freight moved by witness' line in connection with the G. N. and the N. P., principally from the middle west. (3005) By middle west witness means "Chicago territory and the—well, largely from points on the lines of the Great Northern and Northern Pacific." An occasional car moved from Pittsburg, but only to a limited extent. The boats took that traffic from the N. P. at Tacoma, and the G. N. at Seattle. His boats have never made Portland under their own management. He carried quite a tonnage of transcontinental freight on the Canadian differential, probably 300 tons or so on every steamer, running every five days. It consisted of miscellaneous merchandise originating everywhere east of the Missouri River. His line participates in business from San Francisco to Montana in connection with the N. P. and G. N. Has been interested in that business for fifteen years or longer. The S. P. via Ogden and the O. R. & N. via Portland, also compete for that business.

Demoralization of ocean rates.

Transcontinental traffic.

Montana business.

(3006) From San Francisco to Portland that traffic has moved both all-rail and by boat. The N. P. and G. N. solicit that traffic in San Francisco. So does witness' company. Although merely a guess, witness assumed that more of that traffic went via Ogden than via Portland. Witness carries from San Francisco to Puget Sound freight brought via Panama, and has done so for many years. The amount of freight via Panama has much decreased in the last ten years. That is because of the American Hawaiian steamers. It may also be due to the fact that the all-rail lines are taking more of it, because of greater activity and better service. The Pacific Coast Steamship Company is now operating four steamships between San Francisco and Puget Sound, with sailings twice a week. (3007) Two of the ships are of 2,500 tons; two others of 2,200 and 1,800 respectively. The larger steamers make the trip in 55 hours, the smaller in 65 to 68 hours. Have one more regular steamer now than eight or nine years ago, but in the past has had extra steamers running, freighters. The transcontinental freight hauled from points east of the eastern terminals of the G. N. and N. P., and thence south by the Pacific coast boats is very limited. Seldom gets any freight from the Atlantic seaboard territory. During the rush a few years ago, witness handled more freight, because the direct lines were hardly able to take care of it temporarily after the fire. Under normal conditions he handles a

Carries very little transcontinental freight.

very small amount from points east of the eastern termini of the G. N. and N. P.

Steam schooners.

(3008) There are half a dozen steam schooners running regularly between San Francisco and Tacoma, and Seattle and Portland. At the present time they carry more freight than when lumber rates are high. They are more active when lumber cargoes are scarcer and rates lower. If witness' recollection is correct, the rate war was brought on by the steam schooners making a low rate. The North Pacific Steamship Company is a line controlled by Dowe & Co. It is not a line of steam schooners. It operates passenger and freight steamers between San Pedro and San Francisco and Portland, and between San Francisco and Eureka. Witness thought one steamer running between Eureka and Portland.

North Pac. S. S. Co.

(3009) He thought at the present time it operated three steamers. It has been operating between here and Eureka for a number of years, and between San Francisco and Portland, and southern California and Portland, at least four or five years. It has been actively soliciting freight at those points. There are other steam schooners operating between San Francisco and Portland. They have been operating for a great many years, and were operating there in 1901. Witness thought the water rates had been somewhat advanced during the last year or two, since the management of the O. R. & N. steamer line was separated from the rail line. Witness doesn't think the steam schooners have cut the rates for some years. "They have fixed the rates—cut the rates on individual articles." From San Francisco the tonnage to Portland is not particularly heavy, and witness didn't think the steam schooners would carry very large quantities of merchandise. His guess would be that if you include cement, salt and articles like that, it would amount to 40 or 50 per cent. of the total tonnage. (3010) Witness thought the O. R. & N. had been furnishing a seven days service for the last two years. He also thought the Can. P. differential was withdrawn in 1898. It was ten per cent. off the rail rates. (3011) Under the differential the bulk of the business moved by the direct lines. The volume of traffic carried by the Can. P. into San Francisco was a small portion of the business. Since the withdrawal of the differential, the amount handled by the Can. P. is infinitesimal.

Other steam schooners.

Can. Pac. differential.

Watkins.

(3011) A. A. WATKINS.

San Francisco. Stoves.

(3012) For 45 years connected with W. W. Montague & Company, dealers in stoves, tinware, plumbing goods, tiling, etc. His shipments from the east come from New York, Boston, Philadelphia, Pittsburg, Cincinnati, Chicago, Milwaukee, and Louisville. Shipments have come both by rail and water for the last fifteen or twenty years, both by the S. P., U. P. and Santa Fe. Prior to the fire, some by Panama, and since the fire by the American-Hawaiian. Traffic from the Atlantic seaboard came some by the Sunset-Gulf and some all-rail. From Pittsburg and that vicinity, it came over

Routing of his business.

the S. P. chiefly by the Sunset-Gulf. West of the point where the rail rates to the seaboard are absorbed by the Sunset route, a small portion of the traffic came all-rail by New Orleans. It came that way from Pittsburg and Wheeling. (3013) That traffic consisted chiefly of sheet iron. From New York to San Francisco by the Panama route took thirty days; the Sunset route about twenty; the all-rail route about the same. The service via Panama was very unsatisfactory. The goods were damaged. The American-Hawaiian service is very good. Stoves are shipped all-rail. They won't stand rough handling.

(3013) C. M. GOODALL.

Goodall.

San Francisco. Formerly in steamship business.

Member of the firm of Goodall, Perkins & Company, merchants. (3014) For many years the firm were general agents of the Pacific Coast Steamship Company, and had superintendence of the O. R. & N. Co.'s ocean division, from 1882 until about 1900, when the Pacific Coast Steamship Company withdrew the "State of California." When the Pacific Coast Steamship Company first went on the route in 1887, the Oregon S. S. Co., the predecessor of the O. R. & N., was operating two ships, and the Pacific Coast S. S. Co., one ship. At the time the O. R. & N. connected with the N. P., or a year or two before that, making a transcontinental line to Portland, the Pacific Coast Steamship Company operated two boats, and the O. R. & N., two. Shortly after the road was opened, business fell off so that it dropped back, first, to three ships, and then to two ships, one operated by each of the companies, and finally, when the "State of California" was withdrawn, the O. R. & N. put on a boat in place of it.

Steam schooners increasing tonnage.

(3015) The steam schooners have been increasing their tonnage. They have a single hold, carrying about two-thirds of their cargo, namely, lumber, on deck. You could not well load them to their capacity with merchandise, unless you put a deck load on. They have been increasing their size the last few years, but eight or ten years ago they would carry perhaps 500 or 600 tons under decks. They didn't have divisions in with the railroads. 75 per cent. of the traffic carried by the O. R. & N. boats, witness thought, was local to Portland. 25 per cent. went beyond. Witness' firm retired from the management of the Pacific Coast Steamship Company in 1902. They control the Oregon Coal & Navigation Company, which runs one steamer from San Francisco to Coos Bay, taking merchandise up and coal back. They own a coal mine, and the boat brings down their own coal, occasionally a little lumber and produce. Loads what merchandise and passengers he can get going up. The S. P. has a freight boat which runs irregularly between San Francisco and Coos Bay. The other boat that formerly ran on the line now runs from Portland to Coos Bay.

Coos Bay boat.

(3016) That is a passenger boat. The S. P. makes the same rates on merchandise from San Francisco to Coos Bay that witness does, and there has been no change since he began running the boat

thirteen years ago. "Of course we operate entirely as a coal proposition; so that we are like the steam schooners that are going after lumber. What we take up in passengers and merchandise is just that much gained. We are not depending for a living on the merchandise." The tonnage carried on the Canadian differential, witness should say, was very small compared with the tonnage a city of the size of San Francisco should have. (3017) They participated in the division of the through rate. The bulk of the traffic moving under the Can. P. differential was light bulky stuff. There was some iron. They naturally took a high class freight rate, but witness thought the bulk offset the class as a general thing. The railroads could use a furniture car for this light stuff, instead of an ordinary car, but the steamers had only just so much cubic capacity.

Can. Pac. traffic.

McCartney.

(3018) H. M. McCARTNEY.

Berkeley, Calif. Asst. Engineer Western Pac.

Lives at Berkeley, Cal. Assistant engineer of the Western Pacific. Made three surveys under three different companies, of what now constitutes the San Pedro. The first in 1889 and 1890 for the O. S. L. and Utah Northern. These surveys began at Milford, Utah, and extended to the Nevada-California line. There were other surveys into California, but not what are called final locations. This survey was followed by construction, which began January 1, 1890, and continued until October 14. During that time the greater portion of 115 miles from Milford to Caliente, Nevada, was graded, and track laying had begun at Milford. 7 3-4 miles of track were laid, of which 3½ miles were finally surfaced. A 30 mile branch from Caliente to Pioche was also partially graded. All work south of Milford was stopped October 14, 1890. The 7 3-4 miles of track was subsequently taken up. (3019) Witness doesn't know when.

Surveyed San Pedro routes.

It was done before 1896. In 1896 a company was organized in Salt Lake City, called the Utah & California, of which witness was chief engineer. Witness reads list of men interested in the company. George Q. Cannon, of Salt Lake, was President. Witness then called on the receivers of the U. P., and the latter said that they were not opposed to the building of the new road, and agreed to furnish copies of such maps, profiles and notes as witness desired.

Utah and California.

(3020) These were furnished, and the Utah & California paid for same. Witness resurveyed the same old line. No construction work was done, and the enterprise was abandoned. On March 26, 1901, he started a third survey from the place where the old grade crossed the Utah-Nevada line, about 75 miles from Milford. At this time the track had been laid as far as the state line. There is a little station there, called Uvada. The third survey was made on behalf of the San Pedro road.

(3021) The survey reached Caliente April 2, and Pioche on Arpil 7. On April 8, witness started the survey down the Meadow Valley from Caliente, there being then no grading south of that point. This survey was continued until July 10, when it

reached the Nevada-California line. After witness left Uvada, construction was started along the old grade by the San Pedro. The O. S. L. contested this work, and the matter was fought out in the courts, resulting in a decision adverse to the San Pedro, and their grading forces were withdrawn. Witness was then ordered to make a survey through some other pass, so as to get over the rim of Salt Lake Basin, without touching any of this old grade, and a line was located through a pass called Miller's Springs, practically adjoining what are now the stations of Modena and Caliente. Very little grading was done on this line. That didn't go through the Meadow Valley. It might be called "a side hill line" versus a drainage line. Contest of O. S. L.

(3022) After the location had been started from Caliente southward, construction work was commenced at Caliente on May 6, 1901. On May 14, another camp was put in fourteen miles south of Caliente. On May 23, a contract for sixty miles southward from Caliente was let and the contractors' forces were scattered at various places over this sixty miles. All this work was stopped November 9, 1901. The grading or construction work done up to that time ran into tens of thousands of dollars. It was altogether grading, no trestles and no track. An agreement was then reached with the O. S. L., and a joint survey was started about November 15, and was carried on, as witness recalls, to completion, each party locating his own line, and by agreement not coming within twenty feet of the line of the other party, the San Pedro taking the right hand side of the canyon going south, and the O. S. L. the left. The joint survey was completed some time in the spring of 1902, and later in the year witness was ordered to disregard both these lines, and to put in a final location on the best line the country afforded, and this line was graded and the track laid on it. (3023) The joint survey extended to Bird Springs Pass, Nev., in the vicinity of the California line. That is all desert country. The final line disregarded the joint survey both in the canyon and on the desert. Witness' recollection is that the San Pedro up to the time it was stopped in November, 1901, had spent in the vicinity of $100,000.00. Joint survey.

(3024) The San Pedro, while the work in Nevada was going on, was also surveying a line across Utah, but that never got all the way through. It didn't get half way down. When witness first began his survey, the O. S. L. had no surveyors at work there. Witness saw no one until May. He started March 26. (3025) Mr. Eccles and his associates laid the track on about 75 miles of grade which had been made in 1890 from Milford to Uvada. Witness never saw this until 1901. It was then run independently. The O. S. L. had not taken it over. So far as witness knew, the O. S. L. took possession in April, 1901. When witness went to work on this survey he had the old profiles, maps and field notes that the Utah & California Company had used in 1896. They were furnished to witness by Mr. Whittemore. Witness didn't see any collision

Right of way purchased.

between the respective forces. He was ahead with the survey. (3026) Previous to the abandonment of the joint survey, the San Pedro had bought right of way through the various pieces of land in Meadow Valley. They had bought none in Utah, that witness knew of. The country as a rule was almost uninhabited; all public lands.

Work done by U. P. in 1889 and 1890.

(3028-3029) Witness describes work done by the U. P., or, rather, the O. S. L. and Utah Northern, in 1889 and 1890. The reason for suspending the work on October 14, 1890, was the failure of Baring Brothers of London. (3031) The San Pedro road was incorporated March 21, 1901. (3032) The last line that witness surveyed was run so as to correctly locate and define and embrace in the proposed right of way, the old grade, tunnels and improvement work that was done by the Short Line in 1890. The same is true of the surveying done by witness on the line from Caliente to Pioche. (3034) The line which witness surveyed, avoiding the O. S. L. line, he found difficult and expensive. The

Distances.

line south from Caliente through the Meadow Valley Wash is through a canyon for a little less than 70 miles. The total distance to the Moapa River is about 75 miles. The total distance through the canyon, north and south of Caliente, is about 105 miles, that is, from Pioche to Moapa. From Uvada to Caliente is 40 miles, and from Caliente to Moapa, 75.

(3035) In making the second survey from Caliente southwesterly, witness paid no attention to the survey of 1890. There had been no work done on that line southwesterly from Caliente. (3036) The principal difficulty in the canyon was that the Meadow Valley Wash stream interfered with the construction of the road, one line or the other being in the bed of the stream. The greater part of the canyon is narrow. It goes down in places to 200 feet. Probably 100 feet of that would be channeled, and it is crooked. The walls are precipitous in many places. The predominant grade is 79 feet to a mile, and when you get water running over a 79-foot grade, it means the devil to pay with the railroad. The 70 miles south from Caliente is a nasty place. Remembers Mr. Moore stating that the building of two lines in there meant "mutual disaster." The line finally located was much more satisfactory than either of the preceding surveys. (3038) The side hill line that witness referred to was a feasible line. It would cost about as much as the original O. S. L. did in there. It was located for the purpose of avoiding any collision with the other people.

Canyon is narrow and in places 200 feet deep.

Grade of 79 ft.

Building of two lines "mutual disaster."

Shepard.

(3039) A. D. SHEPARD.

San Francisco. Formerly with S. P.

Lives in San Francisco. General manager of the Pacific Improvement Company at San Francisco. His first railroad experience was with the Erie Railroad in New York, then with the Central Pacific, and lastly with the S. P. With the two last named companies from 1874 to 1901, and at the time he left their employ, the general freight agent at San Francisco. (3040) Remembers

when the Sunset-Gulf route was established in 1883. The policy of the S. P. from that time on, was to work Atlantic seaboard traffic via New Orleans by water. It gave better time than the all-rail lines, averaging 18 to 20 days, and witness thinks he remembers a cargo that went through from New York to San Francisco in 14 days. Sometimes the all-rail line did as well, or better, and sometimes four or five days longer. Competition was very active with the rail lines. Sunset route.

(3041) Occasional shipments came to San Francisco from points north of the Ohio River via New Orleans and the Sunset route, but very seldom. "Q. From what regions? A. I have known shipments by special order moving from Chicago, but that was very seldom and a long time ago. Other shipments moved from Cincinnati, and some moved from Pittsburg, but they were exceptional." Witness doubts if that route was much longer in mileage than the other rail lines, but it was longer in time. Doesn't think that the Sunset-Gulf's time from interior points east of Pittsburg and Buffalo was any better than, if as good as, the all-rail lines. Traffic moved in large volumes, however, both ways. (3042) The Sunset fast freight train was put on when the boat line was first established, in 1883. Remembers a Sunset Limited passenger train by advertisement. Never rode on it. They would not accept passes. Witness' understanding was that it ran from San Francisco via New Orleans and the Seaboard Air Line to Washington. When the boat line was first opened, the S. P. ran special trains, in order to carry the cargo through in one lot. Later, a regular schedule was established for operating convenience, and the cargo handled in the same way. Shipments from north of Ohio river seldom came via New Orleans. Sunset Limited.

(3043) The fact that the entire Sunset line was under a single management was a very strong factor in enabling the line to give good service, and for that reason witness compared it with the Canadian Pacific. The all-rail lines, and particularly those west of the Missouri, have improved their physical condition very much in recent years. The S. P.'s interest in transcontinental traffic as between the Ogden and Sunset routes was largely a matter of divisions. Except as against the Atchison, the S. P. practically always controlled the rail rates from the east to California. Such competition as existed between any other railroad companies and the S. P. and the Atchison was competition between the connections of the S. P., east of Ogden and east of El Paso. (3044) The U. P. couldn't make a rate to California without the concurrence of the S. P. After witness left the Company, the Galveston Harbor was opened, and freight was brought from New York to Galveston, as well as New Orleans, by the Atlantic lines. S. P. interest as between Ogden and Sunset routes largely a matter of divisions. U. P. could not make rate without concurrence of S. P.

(3045) California freight was loaded in special locations in the steamer, and unloaded in train lots, and carried through to California in unbroken transit. These matters were important factors in speed and service. The U. P. could make a rate via Portland into San Francisco, without the concurrence of the S. P.

The S. P. could not make a rate into Cincinnati or Pittsburg or Chicago, without the concurrence of its connections, and a very large traffic for California originates in all those places. There is a heavy tonnage from Pittsburg and Chicago. (3046) The S. P., the route through Ogden, and the Sunset route, and the Atchison, were all trying to get all the traffic they could. The U. P., S. P. and Santa Fe all had their solicitors working the three routes, and a flood of other companies, trunk lines and all. (3047) If the S. P. couldn't get traffic by the Sunset, it would undoubtedly seek to send it by way of Ogden. The Sunset was the first route, the next the Ogden, and "every effort was made to move freight that way." When an S. P. soliciting agent found he could not move freight by his own line, he stepped out and told the connections—the U. P. connection at times, because they were very friendly. What he could not control, some other favored agent might control. Never heard of an instance of the U. P. trying to handle transcontinental freight by Portland. It may be possible some shipments came that way, but witness never considered it a transcontinental factor. It was an out of the way, unnatural route.

If S. P. couldn't get traffic via Sunset it would seek it via Ogden.

Never heard of U. P. using Portland route.

(3048) Able management had something to do with the Sunset's good service, and that had something to do with getting the business, as well as solicitation. In answer to the question that the U. P. by using the Portland route could have reduced rates through this whole territory, if for any reason it was not well treated by the S. P., witness replied: "That would depend something upon the eastern connections of the Union Pacific." The U. P. couldn't make all the reductions they pleased, from the Missouri River west, without regard to eastern connections, because there might not be any divisions agreed on with those eastern connections. The U. P. could have reduced the rate from the Missouri River via Portland, and given the eastern connections the same amount as formerly, but the latter might have demanded more. The divisions with the S. P. west of Ogden might have been such as not to have paid the U. P. to move freight for San Francisco via Portland. The divisions by Ogden and the Missouri River were 54 and 46.

U. P. could not reduce rates via Portland without consulting its eastern connections.

(3050) S. P. agents were endeavoring to move seaboard traffic by the Sunset. It likewise had agencies in Cincinnati, Denver, Chicago and everwhere, trying to move freight via Ogden. The latter "was always their preferred route, with the exception of the Sunset from the Atlantic seaboard. They moved practically little or no freight to California via New Orleans, except from the Atlantic seaboard." Witness' experience in San Francisco was that very little tonnage came from Cincinnati, or any interior point, via New Orleans. The great bulk of it came via Ogden, and they were moving everything they could that way. (3051) The U. P. was, of course, strong north of the Ohio River, "but the S. P. agents were moving freight primarily via Ogden from all that territory, as I have already said. The movement from Cincinnati and Pitts-

S. P. moved practically no freight via New Orleans except from seaboard.

Great bulk of traffic for interior points came via Ogden.

burg and all the interior country via New Orleans was but nominal at the best, and as a rule was only by people who preferred to move their freight that way because they had plenty of time on their hands and didn't care very much as to when it would arrive. The time was slow and it was irregular; it was very unsatisfactory because the roads north of New Orleans were not giving good service, as a rule." Witness was at one time joint agent with the Texas & Pacific at El Paso. Very little traffic moved through El Paso to San Francisco, because the T. & P. was then in poor shape for handling it.

Rail route via New Orleans very unsatisfactory.

(3052) If the U. P. had used the Portland route on San Francisco business, the S. P. could have diverted its east-bound business to the D. & R. G. at Ogden. The S. P. in connection with the D. & R. G. and the eastern connections of the U. P., could have made it very disastrous for the U. P., if the latter had used the Portland route. Witness always looked upon divisions as a voluntary act upon the part of any company. The special value and utility of the Sunset-Gulf route was directly related to unity of management and entirety of route. (3053) It was not practicable railroading to move freight from San Francisco to Ogden and thence to Portland. "I have already said that it was possible to move freight from the east via Portland and water to San Francisco; it is a matter of transportation, the same as moving freight from New York by the Canadian Pacific to Vancouver and boat to San Francisco. It reserves the proposition as on the Sunset Route." The Canadian Pacific was never an important factor, and witness doesn't think their differential created a demoralization in rates.

Special value of Sunset route was unity of management and entirety of route.

(3054) The arbitrators of the Canadian differential decided, two to one, that it should be taken out, because it was not at a disadvantage as compared with the Sunset or the all-rail routes. Canadian Pacific had no disadvantage as compared to the Sunset route, or the all-rail route, so far as witness could see. "Q. Or they had no disadvantage as compared with the Portland route except they were perhaps a little longer? A. Practically so, yes, sir. No, I will modify that. The Portland route was at a disadvantage because it did not have a continuous line of its own. The Canadian Pacific practically did have a continuous line of its own from the Atlantic seaboard via Vancouver to San Francisco, and practically upon the same basis with the Sunset. The Union Pacific, while it may have had a rail and a boat line from Omaha to San Francisco, yet it had to depend upon its eastern connections, which was a decided disadvantage. As between the two routes, the Portland route would be entitled to the differential." Witness always understood that the Can. P. controlled a line into Chicago. (3055) It is not necessary to own a road to make it a preferred line. The connections of the U. P. were very powerful and turned a large amount of business over to that company at Omaha.

Dollar.

(3055) STANLEY DOLLAR.

San Francisco. Shipping business.

Witness is engaged in shipping business at San Francisco—the Dollar Line, running on the coast and to the principal ports in the Orient. (3056) Has never had through rates in connection with the transcontinental roads. Has been in the Oriental business about seven years. Has three ships at present, sailing every ninety days, carrying general cargo. Has had negotiations with the San Pedro, with reference to establishing through rates with them. An agreement was drafted, but the negotiations which lasted several years, fell through. It was proposed to make San Pedro the Dollar Line's principal port in America. It was to be left opitional with the ships, whether they were to make San Francisco as well as San Pedro. (3057) The negotiations with the San Pedro ceased in 1907, about the time of the requirement of the Interstate Commerce Law for publication of through tariffs from point of origin in Asiatic ports to destination in the United States.

Negotiations with San Pedro.

Rulofson.

(3057) A. C. RULOFSON.

Berkeley, Cal. Represents eastern manufacturers.

Lives in Berkeley, Cal. Represents some large eastern manufacturers at San Francisco, Cal. (3058) Was connected with Baker & Hamilton, the hardware company, from April, 1870 to 1904. The S. P. solicited their business from the seaboard and Pittsburg, and that region, via the Sunset-Gulf. The U. P. via Ogden. Witness also used the Panama route, and originally shipped by sailing vessels around Cape Horn, and freight he was in a hurry for, by the Pacific Mail via Panama. The latter was then operating on both sides of Panama. Also shipped by the American Hawaiian through the Straits of Magellan. Witness left Baker & Hamilton before the Tehuantepec route was opened.

(3059) He had some shipments from points in the middle west by way of Portland into San Francisco. They were experimental, very unsatisfactory, and were discontinued. They were some Bain wagons from Kenosha, Wis. Witness doesn't know why they went via Portland. The wagons were much chafed, and witness doesn't think any settlement of the claim for damage was ever obtained. The U. P. never solicited freight that way. Prior to 1901 some of his traffic came from Cincinnati and Pittsburg via New Orleans. Heavy hardware, nails, and probably barbed wire. It came over what was called the Cannonball Line, and some Q. & C. (3060) Witness remembered the Can. P. differential, but not more than 2½ per cent. of his shipments came that way.

Williams.

(3060) J. P. WILLIAMS.

San Francisco. Agent Panama Railroad Co.

Since May, 1907, agent of the Panama Railroad Company at San Francisco. Previously, for five years, agent of the Pacific Mail, and previously with the St. Louis & San Francisco. The Pacific Mail is the only western connection the Panama Railroad has. (3061) There is a nine days schedule from Panama to San

Francisco at present. Nine or ten stops between the two points, and the voyage takes about 25 to 30 days, between Panama and San Francisco. The Panama Railroad steamers on the Atlantic are better than the Pacific Mail. They have also six day sailings, and make the trip between New York and Colon in six days.

Service between San Francisco and New York via Panama.

(3062) At times witness secures more east-bound cargo from San Francisco than the steamers can move. The steamers are booked full of cargo and coast cargo, principally the latter. The time between New York and San Francisco is about the same as it was when witness first went with the Company, some years ago. It averages about 45 days. The Tehuantepec route about 30 days. It is 47 miles across the Isthmus, and the train can run across in a couple of hours, but it takes four to six days to get the freight discharged, and carry it across, and get it loaded again. When the Panama Railroad had its own steamers, the time was 30 to 35 days.

Prentice.

(3063) E. H. PRENTICE.

San Francisco. Formerly with S. P.

President of the Phoenix Desk & Chair Company, of San Francisco, for 2½ years. Previously district freight and passenger agent S. P. Co. Continuously connected with the S. P. Co., directly and indirectly, from 1878 until two and a half years ago.

Prior to 1901 S. P. worked bulk of business from Pittsburg territory via Ogden.

(3064) Referring to the period prior to 1901, the S. P. agency in San Francisco endeavored to work freight from the Atlantic seaboard east of Buffalo, by the Sunset-Gulf, and from Pittsburg and that region, some by New Orleans, but the bulk, at the request of consignees in most cases, via Ogden. Where the S. P. controlled the routing, they didn't send it by New Orleans from as far north as Pittsburg. They did from Cincinnati and immediate vicinity. Very little business moved from Pittsburg by New Orleans on account of time. Business from Cincinnati moved over the Q. & C. and L. & N. All classes of traffic. Traffic from Indianapolis was worked by Cincinnati, the bulk of the traffic from Indianapolis was L. C. L., and Mr. Connor had a merchandise car out of Cincinnati. That car was established seven or eight years ago.

Meeting of agents with Mr. Sproule after merger.

(3065) After the merger, Mr. Sproule called a meeting of the soliciting agents, and said that Mr. Harriman had purchased not the control, but an interest in the S. P., and as far as the S. P. agents were concerned, they were to be known as S. P. agents and to work for that Company, and, of course, he said "You don't want to throw any business away; watch our best interests in this matter." He gave no directions with regard to relations with the U. P. forces. "He did not say to me or any one there to solicit business, after this so-called merger, for the Union Pacific Railroad." He mentioned that the Union Pacific had agents located in all the principal cities of California as well as eastern agents, and left the impression with witness that he was to refer these matters to their representatives in San Francisco. (3066) Doesn't think anything was said about calling the attention of the U. P. to business which might come under the observation of the S. P. forces, and

which might move by the U. P. and S. P. together, and thus yield a larger revenue for the whole system, rather than by the S. P. alone. "Q. What was it you said that he said about referring certain matters to the Union Pacific agents? What were the matters to be referred? A. In soliciting business, take it in San Francisco here, I solicited business for the Southern Pacific Company and left the routing very largely blank, and generally put the Union Pacific agent or representative (I knew them all here) on to the fact that so-and-so had freight to ship. Sometimes I would post the Iowa lines as well, and very often that freight was referred, in many cases by me personally, to our eastern representatives, for business reasons." Previous to the merger, the S. P. was impartial as between the U. P. and D. & R. G. Solicited wool shipments from Nevada to the coast to a certain extent. That traffic moved by the Sunset-Gulf from as far east as Kelton, Utah, on account of the rates. Doesn't recall any wool going over the U. P. from Nevada. None over the O. S. L. and its connections, that he knew of. He had no opportunity to see the tonnage of wool shipments out of Nevada.

Notified U. P. of business. Iowa lines as well.

(3067) At the meeting above referred to, nothing was said about the territory from which business originating was to be called to the attention of the U. P. agencies, because all the officials at the meeting were familiar with that work. Sproule had no reason for calling the meeting together, except to verify the newspaper statement. From Pittsburg, and north and west of Pittsburg, prior to 1901, the bulk of the freight moved by Ogden. Witness didn't know whether the Cincinnati package car was running when he left the service of the Company in 1906, but he thought not. (3068) Doesn't think the package car was a great success. It was never made a feature of. It was left to Mr. Connor in Cincinnati. Nine out of ten of those large concerns in Pittsburg routed their own freight. Witness knew the gross revenue from traffic carried from the east by New Orleans was greater for the S. P. than via Ogden, but didn't know what the expense was.

Package car from Cincinnati not much of a success.

(3069) The route over which business, secured as a matter of personal equation moves, depends a great deal upon where it originates. "Lots of business I got from the southern states, you know, and naturally routed that by New Orleans because it gave us the largest revenue." Business north of the Ohio River, say Pittsburg business, moved over the central routes; principally, of course, the U. P. and S. P. and the Santa Fe and the Rio Grande. "Q. Why did that business move by the central routes rather than by the New Orleans route—that Pittsburg business which you succeeded in attracting to some extent by your own personality? * * A. In soliciting business, one of the first questions of a consignee or those interested in the freight, is to ask about time and service. Can we get cars? What time do you make? That is one of the first questions they will always ask us. And naturally we study this time question. As far as moving freight from Pittsburg by

Reasons why traffic from Pittsburg territory moved via central routes.

the Ogden gateway is concerned, I know for a fact—at least I will modify that and say I am quite sure it was better than by New Orleans, because we always had trouble in getting the service over the lines north of (3070) New Orleans, that is, good service notably the Queen & Crescent and the Louisville & Nashville and those lines; they were rather slow. The Sunset was always all right. They always made very good time from New Orleans." The business that witness personally secured, he himself suggested should be shipped from Pittsburg and Chicago territory via Ogden. Those conditions obtained prior to 1901, as well as since. Witness thought the shippers of the heaviest freight out of Pittsburg were always in a hurry. Doesn't recall securing any freight from Pittsburg by New Orleans. Knows of very little moving that way. Connor solicited from points in the neighborhood of Cincinnati by New Orleans.

Witness always suggested Ogden route for Chicago and Pittsburg territory.

(3071) A. E. GILLESPIE.

Gillespie.

Secretary of the Pacific Machinery Dealers Association, at San Francisco, for five years. It was his duty to arrange for the consolidation of machinery from eastern points to bring to California in carload quantities, principally from New York, Chicago and Cincinnati. The S. P. agent acted for witness at Cincinnati. (3072) There was a great deal of difficulty in getting freight out of that point, in consolidating cars for several years, and it was only in 1905 that witness was able to get his first consolidated cars out of there. Some concern in Cincinnati was given the Dealers Association's Power of Attorney, and Mr. Connor arranged the consolidations. Mr. Connor routed the cars, and they came both by New Orleans and Ogden. Witness requested that they be sent U. P. because the service was better. The service on the Sunset route began to be so bad that witness could get no information as to the location of cars, and finally told the S. P. agent that thereafter shipments must be made via U. P. That seemed to satisfy Mr. Luce's office. The U. P. agent also solicited the business, and when they were advised it was moving by New Orleans, they didn't make any objections. His business from the Atlantic seaboard was not sought by the U. P. solicitors in San Francisco as they understood it was coming Sunset.

San Francisco. Consolidates machinery shipments.

(3073-3074) On January 1, 1909, the rates on machinery were raised 10 cents a hundred, which made quite a little additional cost to the consumer. The purchaser has to stand that. The carload rate was formerly $1.40. It is now $1.50 a hundred from all points east of the Missouri or Mississippi. The Pacific Machinery Dealers Association comprises 22 members, leading jobbers in San Francisco, and was organized in 1903.

(3074) W. D. SANBORN.

Sanborn.

General agent of the Burlington route at San Francisco for 24 years. Employed by the Burlington for 39 years. Previous to

San Francisco. Gen. Agent Burlington route.

1901, the S. P. endeavored to route Atlantic seaboard traffic Sunset-Gulf. The U. P. solicited the same traffic by Ogden. Witness also solicited it and delivered to the S. P. at Ogden and U. P. at Denver, also to the Atchison. (3075) Previous to 1901, the S. P.'s first choice was Sunset-Gulf, second choice Ogden-U. P. Its attitude toward the D. & R. G. was friendly. There has been no difference in the ability of the Burlington to secure transcontinental traffic since 1901, as compared with before. He is just as successful in getting as large a volume by Denver as before. At Denver some is turned over to the Colorado Midland, some to the D. & R. G., and some to the U. P., and some to the Santa Fe. There is "a little more difficulty" in getting east-bound traffic now than before 1901. The S. P. worked Sunset-Gulf as strong as ever first choice, and the U. P. second, and the U. P. cars are all over the coast, ready for use. "We can get business that way, but we have got to rustle for it." Before the merger, the S. P. were more favorable to the U. P. than to the D. & R. G. on east-bound business. At the same time "They would give the Rio Grande pointers."

Burlington just as successful in securing traffic as before 1901.

S. P. worked Sunset first choice, U. P. second.

(3076) The U. P. probably turned over to the S. P. twice as much business as the D. & R. G., and it is customary in railroading to reciprocate favors of that kind. It is hard to tell whether the preference of the S. P. for the U. P. at Ogden has caused any diminution in the percentage of the east-bound tonnage that the Burlington has been able to secure, as business is growing all the time. Witness hardly thought his tonnage had kept pace with the increase in the total tonnage.

U. P. turned over twice as much business to S. P. as D. & R. G. did.

Lang.

(3076) GEORGE LANG.

San Francisco Formerly with U. P.

In the automobile business. From 1888 to 1906 was employed by the U. P. Started in its service at Spokane, Washington, and after four and a half years was transferred (3077) to Portland, in charge of passenger matters there. After three and a half years was transferred to Salt Lake. 2½ years later returned to Portland, and from Portland to Los Angeles, where he represented the U. P. for 2½ years. Was at Portland in the passenger business from 1895 until they closed the office. The S. P., O. R. & N. and O. S. L. all had separate offices at Portland at that time. Solicited freight in San Francisco from 1902 until the fire. (3078)

Sunset Limited.

The Sunset Limited was a first-class train, and the first-class sleepers only went as far as New Orleans. On certain days it carried tourist sleepers that went through to New York. The train called the "Washington Sunset," witness thought, referred to tourist sleepers. Passenger traffic frequently goes one way and returns another.

(3079) Getting the passenger business is a question of getting after it, advertising. Getting in contact with the business. Witness booked a great deal of European emigrant business. The other lines did the same thing, from Atlantic ports to the Pacific coast. They were usually booked from the European port, right

Passenger business from Europe.

through. People in this country would send the tickets over to Europe, and bring their friends or relatives over. There is also some second-class passenger traffic back to Europe. It is a continuous business during all seasons of the year. It moves by sea from New York, Philadelphia, Baltimore, Boston, Quebec and Halifax; some of it moves from gulf ports, New Orleans, Galveston and Mobile. (3080) The advertising would call attention to time, service, through cars, and all that; scenery also.

(3080) R. G. GUYETT. **Guyett.**

Lives at Palo Alto. Insurance broker. In that business since January 1, 1904. Previously chief clerk for the U. P. from September, 1892, at San Francisco, and for a year or two before that was ticket agent for the U. P., entering their employ in May, 1891. (3081) Prior to 1901, 35 to 45 per cent., some months probably 50 per cent., of the passenger business moving through Ogden, went U. P. After 1901, it gradually increased, and the U. P. received possibly as high as 55 per cent. Presumes the change was caused by the friendly attitude of the S. P. Before 1901, the S. P. was neutral, as between the Rio Grande and U. P., as far as witness could learn. Local agents in handling tickets are able to influence the routing of passenger traffic to quite an extent. During the years he was with it, the U. P. put out every possible effort to secure passenger traffic. The solicitors went after prospective passengers, whether there was one passenger or 100.

Palo Alto, Cal. Formerly with U. P.

Passenger business through Ogden.

(3082) The same policy was pursued by the S. P. Witness thought the "Sunset Limited" was put on about 1897 or 1898, possibly before. It was largely advertised, by billboards, posters, newspaper and magazine advertising, and travel by that route was worked by soliciting agents. During the winter months, owing to climatic conditions, they secured a substantial business that way. The European emigrant business was handled largely by the various "European-Italian agents." Witness thought that business was all handled by the agents themselves on a commission basis, and they worked it as they saw fit. There was probably a uniform commission paid by the different roads for that business.

Sunset Limited.

(3083) There was quite a volume of west-bound emigrant business, but not a considerable business back to Europe. It went back as second-class. The winter tourist business was west-bound and was solicited at the other end. The Santa Fe and S. P., witness thought, divided up the business from the Los Angeles territory pretty generally. The U. P. had an agency at Los Angeles working that business, and received a small share, but had to work hard for it. (3084) Business from Los Angeles over the U. P. went S. P. to Sacramento, or else the coast line through San Jose and Ogden. The S. P. got a haul of about 500 miles from Los Angeles to San Francisco, and about 830 miles from San Francisco to Ogden.

Emigrant and tourist business.

McEwing.

(3084) JOHN McEWING.

Oakland, Calif. Formerly with O. R. & N.

Lives in Oakland, Cal. Traffic manager of Dunham, Carrigan & Hayden Company, wholesale hardware. Previous to that went on the street for the O. R. & N. in 1898. The office was absorbed by the U. P. in 1901, and he continued in the joint employ until 1906.

Montana and Idaho business.

As solicitor for the O. R. & N., he worked business to Montana points preferably through Spokane, in connection with the G. N. or the Short Line by Huntington, or lastly N. P. by Wallula, as the latter gave the shorter haul. The traffic moved to Portland by boat. (3085) The N. P. competed for that business. They preferred to take it via Tacoma, but secondly via Wallula. The S. P. worked it via Ogden, and some through Portland in connection with the N. P., mostly through Ogden. The traffic consisted chiefly of wine, canned goods, dried fruit, sugar and salt. The competition was active on an equality of rates. Traffic destined to points in the vicinity of Boise, Idaho, the O. R. & N. worked via Portland, the S. P. via Ogden. Prior to 1901, witness was not working freight business for the U. P. Business between Portland and San Francisco was then being sought both by the Shasta route and the boat line, but not very actively by the S. P. They carried very little freight between San Francisco and Portland. They didn't get very much. The boat line had much the best of it.

S. P. didn't carry much freight between Portland and San Francisco prior to 1901.

(3086) The latter had a differential rate, a five days service regularly, with sometimes in the winter season, when grain was moving south very heavily, an extra vessel. The extra freight steamer didn't carry passengers. Witness thinks the service is now weekly. The traffic of witness' present firm moves largely by the American-Hawaiian and Panama. The Tehuantepec route takes from 25 to 40 days from New York. It will average 31 or 32 days. Panama is ten days slower. Some commodities are cheaper by Panama, and others by Tehuantepec. The Panama has a differential over the all-rail rates, and the American-Hawaiian makes rates entirely ignoring those conditions. The Panama rate is the transcontinental rate, less 30 per cent. off L. C. L. and 40 per cent. off carloads, with the exception of a few commodity rates. They have about a dozen commodity rates out of New York, on which there is an absorption that seems to have no reference to the transcontinental rates.

American-Hawaiian and Panama routes.

(3087) Witness ships all-rail. Doesn't use the Sunset-Gulf route. When he uses any boat line he uses the American-Hawaiian or the Panama route. The American-Hawaiian Line has solicitors, but they never call on witness. Business witness moves that way is controlled by the rates, and not by solicitation. Sometimes witness ships more by Panama; sometimes, more by Tehuantepec—about half and half, he should say. The Panama line absorbs the local rates into New York, just as the Sunset route, with the exception of those commodity rates witness referred to. There are a dozen commodity rates they publish on which there is no absorption; that

Rates.

is, net. New York proper. While from some other points they were absorbed up to 20 cents, maintaining a minimum of 40 cents, witness thought. In jobbing the goods east of here, the rates break even over about Winnemucca, or close to that point in Nevada, about 400 miles. Witness doesn't see that the recent increase in rates has affected his business.

(3088) The increase applies to the goods that he handles. If the goods are sold f. o. b. San Francisco, the increase is paid by the manufacturer, unless he adds that to the cost; otherwise witness presumed it was paid by the consumer. About 50 per cent. of witness' business moves all-rail. The Panama route takes half of witness' water business. "Q. That is doing pretty well for a bunch of tubs, isn't it? A. Pretty well." At the time witness was soliciting, the Shasta Route got very little of that business, most of it went by the boat lines between here and Portland. That was on account of the differential and on account of the time. "We were making Portland in about 52 to 54 hours by passenger steamers, making passenger time, while I never knew a shipment—and I placed a good many of them that did move all-rail—to make it in less than 4 days and from there up to 7 and 8, more likely to be 7 and 8 than to be 4." The railroad didn't actively seek the business, as a rule. Business into Montana points and Idaho via Ogden went over the O. S. L. to Butte. Witness thought the S. P. was a fairly well managed railroad at that time.

Reasons why traffic between San Francisco and Portland went via boat line.

(3090) W. N. ROLPH.

Rolph.

Lives in San Francisco. Secretary of the Griffith Derney Company, (3091) handlers of canned goods, fruits and salmon. Ships both to the east and abroad, principally from San Francisco and other California points. Also a good many shipments from Puget Sound. Shipments to Europe go around the Horn. Occasionally ships to Europe by rail to the Atlantic seaboard. That depends on market conditions. When there is a high price for canned goods in Europe, and they want them in a hurry, they order them overland. Last season witness shipped entirely via Sunset-Gulf, and thence by steamer from New York. Until two years ago, witness made most of his eastern shipments over the Santa Fe. Since then he has been shipping quite a lot via Ogden. Uses the Tehuantepec route very little.

San Francisco. Canned goods.

Routing of his business.

(3092) It takes about 30 days to New York via American-Hawaiian line. Ships very little to Montana. Uses the Pacific Coast Steamship Company, and the N. P. or the G. N. at Puget Sound. Has never shipped into Montana by the S. P. Gets the canned salmon principally from Alaska, also from Puget Sound. The O. R. & N. boat line has now a weekly service, two boats. Formerly had a five days service. They bring very little salmon. From the Columbia River salmon is shipped direct east out of Portland. He uses the Panama route very little. Avoids shipments by water on account of the uncertainty of getting car num-

bers on the bills of lading, and the time in transit. Recent increase in freight rates affects witness' commodities, 10 cents a hundred pounds. The rate on canned goods was advanced from 75 to 85 cents. (3093) He doesn't handle dried fruit. It is the California producer of the canned goods that has to stand the advance in rates.

Morse.

(3093) C. R. MORSE.

Berkeley, Cal. Sec. Am. Trading Co.

Lives at Berkeley, Cal. Secretary of the American Trading Company. Exports and imports everything. Exports principally lumber, wheat and flour, and imports principally sulphur from Japan, bags from Calcutta, burlaps and other jute fabrics. Lived in Japan from 1896 to 1902. (3094) Most of the shipments from Japan went via Suez. Occasionally had shipments to San Francisco, but very seldom has shipments acr s the continent. Thinks the P. M. and P. & A. had solicitors in Japan. Shipped only by the P. M Ships at times to Portland by the P. & A. The only shipments by the P. & A. are bags, and so on, from India, and sulphur from Japan. Thinks the P. & A. runs direct to Portland. Occasionally they stop at San Francisco first. Doesn't remember any San Francisco shipments going over the P. & A. and from Portland down by boat. (3095) Occasionally small shipments went to New York via Portland, but very little.

Jacobs.

(3096) ISIDOR JACOBS.

San Francisco. Canning business.

Lives in San Francisco. President of the California Canneries Company, and of the Napa Cannery Company, at San Francisco. Until last year his traffic moved to Europe by sailing vessel, but a large quantity last year went overland via New York. Some went by the American-Hawaiian, and also by a French line from here. Large quantities by sail, also. Traffic to the Atlantic seaboard now goes by the American-Hawaiian and some overland. Prior to 1901, seaboard traffic went mostly by the Sunset. Practically all of it. The Sunset-Gulf agents then made a greater effort to get the freight on that route than any other line. The U. P. had a soliciting agent at San Francisco at that time and solicited witness' traffic. (3097) His shipments originate in San Francisco and at Napa, but he didn't have the latter cannery in 1901. Has never used the Panama route. His product can be shipped just as well by water as by rail. The American-Hawaiian service is very good. Freight from New York goes through in 21 days. The all-rail service has been as low as 14 days, and has been as high as three months, but the latter is very unusual, due to congestion. That was year before last. As a rule, he figures on 19 days to New York.

Water and rail service.

Michaels.

(3097) C. F. MICHAELS.

San Francisco. Druggist.

Wholesale druggist, connected with Langley & Michaels since 1886. Distributes into western Nevada and California. (3098)

Has shipped very little of recent years to Oregon points. Formerly did. His supplies originate principally on the Atlantic seaboard, but also considerable in the middle west. His seaboard business comes principally Sunset-Gulf, but all water as well. Shipments from Cincinnati have occasionally in the past come by New Orleans, but as a rule come over the northern route. Also ships by the American-Hawaiian line. Has not used the Panama route for a good many years, because of inferior service, irregular time, poor handling. The American-Hawaiian is much better in time and quality of service. Formerly, when witness shipped to Portland, his traffic moved both boat and rail, principally by boat. (3099) Four or five years ago used the rail more than boat, because the service was better. After the fire the rail service was very inferior, and that is largely the reason witness is not doing business in Oregon now. Four or five years ago he could get goods into Portland in about three to four days by rail. Last year it took two weeks. Years ago the sailings of the O. R. & N. were from three to five days. Latterly, they have been five days. Transcontinental rate has been slightly increased on drugs lately. Carload rate increased 10 cents per hundred pounds, and a short time previously the same increase on L. C. L. The former is now $1.50. 70 per cent. of the drugs and medicines consumed on the Pacific coast originates on the Atlantic seaboard. Chicago takes the Atlantic seaboard rate, and witness thought that the remaining drugs originated at Chicago, Cincinnati and St. Louis, and points west of Buffalo. Also gets some drugs from Detroit—Park Davis, and big houses like that. Has more breakage by the Panama route than all-rail. (3100) The time also considerably longer.

Routing of his business.

(3100) T. B. SETTLE.

Settle.

Traffic manager of Horst Company—hop business. Hops originate in California, Oregon and British Columbia. Some in the Willamette Valley. Two years previously was employed in the Auditing Department of the S. P., and was then in a general way familiar with the way traffic moved. Willamette Valley hops witness buys are shipped mostly to Europe, via U. P. Years ago hops moved from that region by the Shasta, Sacramento and Ogden; also by the U. P. No hops move by the Sacramento route now. (3101) None of the hops witness buys in the Willamette Valley move to the seaboard by the Sunset. He has had cars move that way. Hops can be comfortably handled in boats, so the Sunset route is a satisfactory kind of route for hops. Ships quite a few to Milwaukee. They go by the U. P. and C. M. & St. P. To St. Louis, the majority go by Kansas City and the Wabash or the Missouri Pacific. Has had cars go via New Orleans and the I. C. Has shipped a few cars to Cincinnati. The last ones went via New Orleans and the I. C. and the B. & O. S. W. None of his freight from the Willamette Valley moves by the D. & R. G. now from Ogden. (3102) One car left Mount Angel, on the S. P. near Salem, that

San Francisco. Hop business.

Routing of hops

the consignee wanted moved by the D. & R. G., but for some reason or other witness' routing instructions were ignored. Witness afterward found out that the instructions were left off by the man who routed the car. It moved over the U. P. The U. P. and S. P. solicitors now call on witness for business very seldom. They don't solicit his business. All of the business goes S. P. or U. P., so there is hardly any use for them to do so. For British Columbia, witness' business moves Can. P. There are not nearly so many grades over the U. P., O. S. L. route, as via the Shasta and the Sierras. The former has the advantage both in grades and distance.

Sunset's time not good from Oregon.

(3103) Very few of witness' Oregon shipments go Sunset, because the time is not very good from Oregon. The all-rail routes are shorter in time and distance, and much quicker. The shipment to Cincinnati via the Sunset was made because it is necessary to divert hops a good deal, and by sending it through New Orleans witness had the privilege of diverting it on the Sunset at the through rate. Shipments via Ogden over the U. P. can be diverted until they reach Council Bluffs. Beyond Council Bluffs there can be no diversion.

Rumpf.

(3103) FRANK J. RUMPF.

San Francisco. In charge of traffic of Wine Ass'n.

In charge of traffic of California Wine Association since 1894. Employed by that Company since 1889. (3104) Sometimes the traffic is routed by the consignees, sometimes by the Association. The monthly shipments aggregate about 1,500 cars. Cooperage supplies, and so on, move west-bound, the cooperage iron coming from Pennsylvania, oak from the gulf states. His east-bound freight originates principally at Winehaven in Contra Costa County, on the bay shore of San Francisco. Doesn't have charge of the west-bound shipments, and doesn't know how they move. Shipments to the east move over all the lines. Witness has made it a practice to favor all the local agencies of the railroads. Ships via Ogden, El Paso, Mojave; occasionally by water to Seattle and Tacoma, and out over the northern lines.

Routing of his business.

(3105) Some years ago shipped considerable by way of Vancouver and the Can. P., on a differential. The traffic was destined to St. Louis, Chicago, St. Paul, Milwaukee, Cincinnati. Doesn't remember whether any shipments went that way to the seaboard. Occasionally ships east by Panama. Such shipments consist of 50 gallon barrels. Hasn't shipped any case goods by Panama for some months, first, on account of the irregular schedule, second, scarcity of space in the P. M. boats, third, rough handling down at Panama and Ancon. Have shipped both cases and barrels by Tehuantepec. They went through in splendid condition. Ships to Montana points. The consignees generally route such shipments, and they are sent sometimes all-rail, and again by way of Seattle and Tacoma.

Montana business.

(3106) Very little has moved to Montana by way of the O. R. & N. boats to Portland. There is only one way for all-rail shipments, S. P. to Ogden and then the O. S. L. The last car witness

shipped north all-rail was the latter part of February or the beginning of March. That moved N. P. from Portland. That route has always been open to witness. Witness finds that the N. P. has secured most of the business in the northwest territory, including Montana common points. It moves via Tacoma chiefly, by boat. The car shipped north in February or March went on account of the number of washouts, &c. Witness intended shipping it by way of the Pacific coast, but the N. P. at that time, being blockaded by snow, he had to make arrangements to let it go by rail from Winehaven, and it went Shasta route to Portland and then by the N. P. Shipments to Portland proper generally go by the first steamship out. It may be the San Francisco & Portland, or an independent boat. Ships case goods that way, and gets satisfactory service. (3107) Five or six years ago shipped some to Portland by all-rail, but only where the consignee favored all-rail shipments. He respects the consignee's requests.

(3107) CHARLES S. MOSES.

Moses.

Thirty years in the wool business at San Francisco. The wool originates principally in California. Some of it in Nevada and Oregon. It is shipped to Boston, the great wool market of the U. S. From Nevada witness thinks his shipments move by the Sunset. That is true most of the way through Nevada. Some of the business may go the other way. He doesn't know. Sunset shipments go by boat from New York to Boston. Some of the wool business from Nevada may go east over the U. P. He doesn't know. (3108) His impression is that it goes Sunset, but he may not be correct about it. Hasn't shipped any to the east by boat from San Francisco for a great many years. Out of Portland his shipments go chiefly over the Short Line, U. P. and other roads. None of it goes Sunset. Hasn't for 12 or 15 years. Doesn't know whether any goes via Sacramento or not. He has not shipped from there this year. Couldn't say whether he had shipped any via Sacramento in the last few years.

San Francisco. Wool business.

(3109) THOMAS DENIGAN.

Denigan.

In the wool business forty years. Handles chiefly California wool. Doesn't get any wool from Oregon. Buys and sells locally. The wool that he packs and ships himself, generally goes by Sunset out of San Francisco. (3110) Very seldom ships from Los Angeles. The facilities there are not good for compressing and packing. Doesn't buy wool in Idaho and Montana; very seldom buys any in Nevada. From interior points in Nevada, it is shipped east in sacks. From Oregon, that is, the outer regions, also in sacks. At other points, Portland for instance, they pack all their scoured wool and a great deal of grease wool, too. Witness bought largely of wool in 1905. Thinks he shipped perhaps a million and a half pounds from the Lakeview region. That all went by the Sunset. Lakeview is on the Shasta route, perhaps 500 or 600 miles from

San Francisco. Wool business.

Routing of his business.

San Francisco. Witness corrected himself, that the wool came from Reno—that narrow-gauge road that runs up to Alturas. In the Lakeview country he has had wool dumped at Agra and Montague, and shipped from there, but it generally comes from there to San Francisco in bales.

(3111) Those towns are on the Shasta route. The Lakeview wool that witness spoke of has generally for the last five years found its way to Reno, and witness takes it for granted has been shipped from there Sunset-Gulf, but he doesn't know. Has never shipped to the east from eastern Nevada or northern Utah. Doesn't know of any shipments of wool made recently by the S. P.-U. P. line to Boston. As far as witness has ever had to do with it, it has all moved Sunset.

Koshland.

(3111) M. S. KOSHLAND.

San Francisco. Wool business.

38 years in the wool business. Ships mostly to Boston. The wool under the jurisdiction of his branch house in San Francisco originates chiefly in Nevada, California and Oregon. Doesn't handle wool in northern Utah. That is handled by the Boston house.

Routing of his business.

(3112) His Nevada wool moves by the Sunset. Hasn't gone the other way in the last few years. Four or five years ago it did. The wool from Nevada is brought to Sacramento, and then sent over the Sunset route around to Boston. Idaho wool is handled by the eastern house. Willamette Valley wool is shipped either over the N. P. or the O. S. L. None of it comes south by the Shasta route. Formerly some out of Portland came around via Galveston by the "Sunset-Gulf." That was 13 or 14 years ago, and at the same time witness also shipped by the other routes. Has also shipped by the Panama route, but not very extensively. It was simply a matter of getting cheap stowage. From New York wool shipped via Panama moves to Boston either by the Metropolitan Steamship Line or by rail.

(3113) That steamship line ordinarily runs in connection with the Sunset. Wool from California is always shipped in compressed bales. The same is true of shipments from through rate points in Oregon. It is compressed at Portland, Pendleton, Shaniko, Arlington and Heppner. The majority of the wool growers dispose of it in the west. There are exceptions. It all depends on the market. Much the greater part of the Oregon wool originates east of Portland on the O. R. & N. lines. All, except the Willamette Valley wool, which is a small portion of the Oregon production. At the time witness shipped by the Sunset, 13 years or more ago, from the Willamette Valley, he was friendly disposed to them. Very often his travelers, who attend to the shipping, would have friends who solicit these lines, and ask for the freight and succeed in getting it routed that way. He thinks that route is still open, but he has never been approached for freight that way in recent years. The N. P. or U. P. is much the shorter route out of Oregon.

(3114) The San Pedro road carries wool to be packed in transit at Los Angeles, and that route is being used very largely from Utah

points, within ten miles of Salt Lake. The Nevada wool all originated on the line of the S. P., and moves to Boston Sunset. Four or five years ago, witness shipped the other way, by Ogden and U. P. There were rates in both ways. Wool originating at local points on the S. P. was then moved easterly through Ogden. More recently witness has shipped by the Sunset. Sometimes witness has occasion to change his routing, and he could do it here through the S. P. office while it was in transit. He supposed that would be true shipping the other way, so long as it was on the U. P. Doesn't move any wool from the Willamette Valley by the Sunset route now. (3115) All goes via Portland, either N. P. or O. S. L. He has an agent there who attends to the routing. The wool is carried to Portland to be pressed. The bulk of the Oregon wool is not raised in the Willamette Valley, and very little of that comes to Portland at all. From Pendleton it moves either by the N. P. or U. P., but witness thinks the bulk of the Oregon wool moved O. R. & N. During the past 13 or 14 years, witness has shipped the bulk of his Oregon business as he does now.

Wool movements.

(3115) JULIUS WOLFF.

Wolff.

Twenty years in the canned goods and dried fruit business at San Francisco. (3116) Ships principally from Napa and Santa Clara Counties. Prior to 1901 the S. P. endeavored to route seaboard traffic Sunset, and the U. P. also sought the same business. His shipments to the seaboard do not, as a rule, move all water. They move chiefly all-rail or Sunset. Shipments to Europe move via New York, as a rule, and go all-rail. When witness speaks of moving by rail, he includes the Sunset route. Hasn't shipped anything by the Panama route for five or six years. Didn't like the service.

San Francisco. Canned goods and dried fruit.

(3117) Has shipped by the American-Hawaiian line. It is a trifle better, but not as good as the all-rail. Time is a factor. The Panama route takes thirty days to New York, sometimes forty. Has routed considerable business to the east by way of the D. & R. G. from Ogden. Has done so recently. The proportion of business witness gives that company is very small compared to what he formerly gave them. That is due possibly to a matter of preference, possibly a matter of convenience. He cannot always get cars that are suitable to go that way, without delay. Thinks he had better luck getting cars to go that way years ago. Ships canned fruit and salmon to Montana points. That business goes from San Francisco via Ogden. Years ago, before the merger, the buyers used to favor shipments via Portland and over the N. P. and the O. R. & N., but witness always preferred shipping them by Ogden. Over the latter route the goods go through in the same car, without transfer. (3118) The buyers in those days sometimes compelled witness to ship by Portland. Witness didn't know why. He thought the rates were the same both ways. Prior to the merger, the witness thought S. P. sought to route business to the east

Routing of his business.

Montana business.

by the Sunset. Where they couldn't get it that way, they then tried to get it by Odgen.

Rosenberg.

(3118) ABRAHAM ROSENBERG.

Berkeley, Cal. Dried fruit.

Lives in Berkeley, Cal. For sixteen years a shipper of dried fruits at San Francisco. Assemble the shipments at various points in California. Sometimes shipped from the points where they are grown, without assembling. (3119) Prior to 1901, the S. P. solicited witness' business for the Atlantic seaboard for the Sunset; and the U. P., for the Ogden route. The competition between the companies was active, "not so much on seaboard business as intermediate territory—Chicago, Indiana, Ohio." On figs, comes in competition, in the eastern markets, with Smyrna; on nuts, with Spain and France. There has been a raise of ten cents per hundred in freight rates recently. Doesn't know who has to stand the increase. There are so many factors entering into that, witness is not competent to answer. (3120) The S. P. is a part of the two routes witness referred to as competing, and must concur in the price at which the U. P. offers to sell transportation from San Francisco. The rates have been equal by the two routes since 1886. If the business went by New Orleans, the U. P. received no revenue. Witness is not interested in the division of the rate.

S. P. must concur in through rates via U. P.

Lipman.

(3121) H. R. LIPMAN.

Berkeley, Cal. Dried fruit.

Lives in Berkeley, Cal. About twelve years in the dried fruit business. Connected in business with the preceding witness. Divides shipments up amongst the various roads. Ships quite largely by the Tehuantepec line. That takes 25 to 36 days, an average of about 30 days, to New York. All-rail 18 to 20 days, this last year. Ships practically nothing by the Pacific Mail. The service is not satisfactory. Warehouse in San Francisco is on a S. P. spur track. Ships some from Ogden over the D. & R. G. Has had no trouble in getting cars to ship over that line this past year. Prior to that, it was rather difficult at times to get equipment for that routing.

Routing of his business.

(3122) Has had charge of this branch for four years, and probably the first three years he had more or less trouble getting cars from the D. & R. G., but nothing of any special note. Can route traffic over the D. & R. G. in S. P. cars. Thinks he has had no trouble in doing that. If he couldn't get a D. & R. G. car, he has usually been able to get an S. P. car, after taking it up with the assistant general freight agent. He didn't know that it was necessary to do so, but he has usually done so, and been given the necessary authority. In shipping over the U. P., it is not necessary to get a U. P. car. Shipments to Montana sometimes go by the Pacific Coast Steamship Company, care of the N. P. or G. N. at Seattle. Doesn't think he has shipped any of late years to Montana either via Portland or Ogden and the O. S. L. (3123) Doesn't recall any O. R. & N. agent has solicited his Montana business.

(3123) A. E. FISK.

Fisk.

Employed by the C. A. Smith Lumber Company, whose main office is in Minneapolis. They have saw mills and offices at Marshfield, Oregon, and a planing mill and distributing yard at Bay Point on the Bay of San Francisco. Offices at Marshfield and Coos Bay, Oregon. Their mill at Marshfield is cutting between 250,000 and 300,000 feet a day. It is one of the most modern mills in the country. There is a very large body of timber tributary to Coos Bay.

San Francisco. Lumber business. Mills at Marshfield, Ore.

(3124) Lumber is shipped out by steamers and sailing vessels. The Lumber Company for the last fourteen months has had a boat of its own. Previously they shipped on chartered vessels. The S. P. has a boat running between Coos Bay and San Francisco. She carries chiefly coal south-bound, and is not a passenger ship. Her name is the "Czarina." The other boat that the S. P. bought from Mr. Spreckles, the "Breakwater," has carried small lots of lumber, but is not a lumber-carrying vessel. Lumber is chiefly carried on deck. There is no rail connection between Marshfield and the outer world. A small railroad runs out of there, but does not connect with the outer world. His products are sold in California, and some in Nevada. (3125) There is a white cedar that grows at Coos Bay, used in certain classes of work in the East. Some of it has been used for interior finish. That particular kind of cedar is not grown in other places. It is a rather rare wood. The Simpson Lumber Company also has saw mills on Coos Bay; also there is a North Bend saw mill. Those are the only ones that are running there at present. The former is quite a large concern, their two mills cutting from 150,000 to 160,000, and the North Bend mill about 50,000.

S. P. boat to Coos Bay.

White cedar.

(3126) J. G. MELVIN.

Melvin.

Lives in San Francisco. Since June, 1906, traffic manager of California Fruit Canners Association. Previously, from 1901, employed by the S. P. There are 22 or 23 canners in the Association. Ships canned goods and dried fruits all over the world. (3127) Shipments to the eastern part of the U. S. move via Ogden, by the "Santa Fe," via El Paso by the "Sunset-Gulf," the American-Hawaiian and Pacific Mail. Has known some instances where it has gone Sunset all-rail. Doesn't ship to any great extent by Panama. That route doesn't compare favorably with the Tehuantepec. It takes longer in transit, and the P. M. requires goods to be corner strapped in order to get a clean bill of lading, and that adds an additional expense. It is not required by the American-Hawaiian or Sunset-Gulf line. Witness' shipments to Montana move via Portland over the O. R. & N. and the Short Line, and also over the N. P., and also via Ogden. Some of these shipments go by rail to Portland, in connection with the O. R. & N. and the N. P.

San Francisco. Traffic Manager Canners Ass'n.

(3128) The U. P. organization solicits these shipments via Ogden in connection with the O. S. L., and they also work the

Portland route in connection with the O. R. & N. The N. P. works for the business by the Shasta route, and also by the Pacific Coast Steamship Company. Bulk of Atlantic seaboard business moves by boat via Tehuantepec. The rail shipments are equally divided between the all-rail and the Sunset gulf. Some of it goes by the Pacific Mail boats. Witness routes most of his own shipments.

(3129-3130) J. O. BRACKEN.

Testimony immaterial.

Ray.

(3130) W. S. RAY.

San Francisco. Stoves.

In the wholesale and retail stove business since 1872 at San Francisco. Makes quite a number of stoves, and buys the balance in Massachusetts. (3131) Shipments from Massachusetts now come U. P. and C. P., but they have come by Sunset; some by the American-Hawaiian. Has never used the Pacific Mail for stoves, but has for other goods. Sent quite a number by the American-Hawaiian before they started to cross Tehuantepec, but finds the service is not as good now as it was before on account of crossing the Isthmus. Has shipped quite a number of stoves by the Sunset. Has shipped sheet iron, &c. from Pittsburg. Usually ships from there U. P. and C. P. He may have tried a car from Pittsburg a long while ago via New Orleans, but that is not his ordinary way to ship. Quite a number of years ago he patronized the Santa Fe, and now ships a few local shipments, but not full cars that originate around Chicago. Doesn't use the Sunset route now for stoves, because they come in better condition all-rail. They don't have to be transferred. There is the same objection to the Sunset as to the Tehuantepec. (3132) The transfer naturally breaks the stoves up, although they are crated to obviate the breakage.

Routing of his business.

Harriman.

(3132) E. H. HARRIMAN (2).

Testimony in Minnesota vs. Northern Securities Co.

Testimony given by witness in the case of State of Minnesota vs. Northern Securities Company, et al., at the hearing held in New York, November 21st, 1902, and sworn to before the Special Examiner November 24th, 1902.

On or prior to May 9th, 1901, witness had, acting for the railway interests that he represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about $78,000,000.00 par value. (3133) In September or October, 1901, negotiations looking towards the acquisition of the N. P. holdings acquired by Mr. Harriman, were opened up between J. P. Morgan & Company and witness. They continued about a month or six weeks, possibly two months, before being finally consummated. Witness had many talks in regard to the matter with Mr. Bacon of J. P. Morgan & Company. He had talks with nearly every member of the firm. They never disclosed to witness whether they were acting for themselves or somebody else. Before the negotiations were finally closed, it was understood that witness was

Negotiations with J. P. Morgan as to sale of N. P. stock acquired prior to May 9, 1901.

to take some stock in a company to which this stock was to be transferred.

Witness didn't learn what company was to take it until practically at the time that he received the stock of that company in exchange. "I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever difference we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made that payment should be made partly in cash and partly in a holding company stock. I think it was just toward the end of the negotiations, when we were considering whether we would break away or get together on it. * * * (3134) There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares, in the stock of a holding company so much and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company or whether they would hold it themselves; but they would give us that holding company's stock in part payment." Witness learned that several days before the stock was delivered; he doesn't remember just when; perhaps two or three days; it may have been within three or four days, or perhaps two days. He first learned that this stock was to be delivered to the Northern Securities Company, when it was delivered. His recollection is that was the first he knew about that. He thought they first made a proposition to him to make payment for this, or part payment for it, in the stock of some other company towards the end of the various conferences and negotiations, as he said; within a few days, perhaps, of the time the thing was absolutely closed.

No understanding at beginning as to holding company.

Towards the end, offers made to pay in shares of holding company.

First learned that delivery was to be to Northern Sec. Co. when delivery was made.

(3135) "Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific? A. Practically that is what we thought." They contended that they had the right to retire this preferred stock which he held, without his consent. He thought steps were taken to retire it, before the negotiations were ended,—that action had been taken to that end. "Q. The record shows that the action taken to retire the preferred stock was on November 13, 1901. A. It was about that time, then. MR. YOUNG. And the record shows that your sale was closed after the 15th. WITNESS. Then, I say it was practically about that time." He first learned that they intended to retire the preferred stock when the action was taken. Up to that time he supposed he had a controlling interest in the N. P. by his holdings. "Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific and supposed you had it, and no questions were raised about that retirement? A. Well, of course it was stated to us that this preferred stock could

Steps taken to retire preferred stock.

Common talk that preferred stock could be retired.

be retired. Q. Who made those statements? A. Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time, that that was the intention. But of course the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken and it hadn't been retired, we probably would have been in control.

(3136) "Q. You understood, then, during these negotiations and prior to the time you closed the transaction—— A. That there was a probability—— Q. ——that there would be an effort made to retire that stock without your consent? A. A probability of it, yes. Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company, with whom you negotiated, state to you that they intended to do that? A. I imagine they did. I don't remember just what— Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not? A. Practically. Q. When did this discussion regarding the retirement of the preferred stock first come up, as you remember it? A. I think in the summer of 1901. Q. So you had that in mind, when negotiations were first opened between yourself and the firm of J. P. Morgan & Company, of course? A. I presume that was one of the influences. I don't know whether I had it in mind or not. I didn't know just what we would do." At the time he finally consented to accept in part payment for his holdings, stock in a holding company, did not insist upon any basis on which any other stock of the N. P. should be acquired by that holding company. He finally agreed to turn in his holdings and receive from the Northern Securities Company upwards of eighty-two millions in stock of this company. He knew at that time on what basis this holding company was to take in other N. P. or G. N. stock, viz. on the basis of $115 for the N. P. and $180 for the G. N. He made no request or demand that they should not take any of the stock of either of these companies at a higher rate than that. "Q. Did you understand that they would not? A. I did not. Q. Were you willing to surrender your holdings to a company and allow it to determine whether they would exchange their stock with some other holder for twice the amount that you were getting? (3137) A. Not if I supposed they would do it. But there was no stipulation. Q. Well, you understood they would not? A. I don't think the thought crossed my mind."

Probability of retirement inducement to give up his holdings.

Terms of exchange.

"The statement was made to me that they would put this Northern Pacific stock into a holding company and give us—not this Northern Pacific stock, but that they would give us in part payment a holding company's stock on the basis of 115 for Northern Pacific, and, if Great Northern were taken in, on the basis of 180 for Great Northern. They didn't state how much they were going to take in or how little they were going to take in; nor did I ask them to

stipulate that they would not take any more than a certain amount, or to agree to take a minimum amount. The statement was simply made that they were going to form a holding company or had formed a holding company and would pay us in this stock, and that those were the terms on which it was to be bought." He doesn't think the statement was ever made to him that if they took in any other stock than what he would surrender to the holding company, they would take it on the basis of 115 for the N. P. and 180 for the G. N. "It was a simple statement that they were going to exchange these shares of Northern Pacific and Great Northern on such a basis, and that they would make us part payment in that stock. Q. That is what I want to get at. They told you, then, that certain of the holders of the stock of the Great Northern and the Northern Pacific were going to exchange their stock for the stock of the Northern Securities Company, on the basis of 115 for the Northern Pacific and 180 for the Great Northern? A. They didn't say certain ones were, but they were going to form this holding company, and that they would pay me in the holding company's stock, which stock should be issued on that basis. They didn't say that they had agreed to exchange certain stock." Witness understood from their statement that the basis of exchange, if any was made, was 115 and 180. He was not consulted at all regarding the formation of this holding company. He didn't know where it was going to be organized; and had nothing to do with it. (3138) He was not consulted about the retirement of the preferred stock either. "Q. Did you make any inquiries regarding who were to be the officers of the holding company, or where it was to be incorporated, or the amount of its capital stock, or anything of that kind, before you agreed to accept its share in part payment for your holdings? A. I don't know that I made any inquiries. I presume there was considerable talk about it, but I don't remember that I made any inquiry from anybody. Q. Do you remember any statement made by persons with whom you negotiated, or by Mr. Hill or his associates, who ultimately formed this company, as to where it was to be incorporated, or the amount of capital stock, or its officers? A. All I remember is just as I have stated; a statement made to me that if this trade went through they would pay us in the shares of a holding company which would issue its stock in exchange for Northern Pacific at 115 and Great Northern at 180. And I agreed to take so much of that stock in exchange for the shares of the Northern Pacific we held—all the Northern Pacific we held. Q. But you made no inquiries as to where the corporation was to be formed or the amount of its capital stock? A. I knew, of course, the amount of the capital stock; but I didn't go into the particulars of the formation of the company at all. That may seem strange. But, in the enormous transactions we have done here, we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Not consulted about formation of holding company.

All he remembers is that they would pay in shares of holding company—N. P. at 115, G. N. at 180.

"Q. Did you finally consent to surrender your holdings on the basis on which you did, because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific? A. I think I recollect pretty clearly that from our standpoint we thought it was better for us to accept that price for our stock than to go into a legal contest. Q. And you understood that if you did not do that, you would have a legal contest on that question? A. Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock. Q. Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion. A. Yes, but they had not reached a conclusion. Q. That is, you waited until the very last moment to see if they would do what you understood they would do. A. Well, we were very patient. Q. Then, if such action had not been taken you would not have surrendered your stock? A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think (3139) it is exactly a fair question; because the board of directors might have determined (if they had not done it) to have sold our shares for less. Q. Well, you were acting on behalf of your company largely by yourself at that time, I suppose? A. Largely. Q. And your actions were guided by what you have stated? A. By what I found, the surroundings, yes."

Thought it better to make trade than have legal contest.

When he began buying this stock for his company or companies, he did it with the expectation of acquiring control in the N. P. or an influential voice in the management. He knew that he had a majority of the combined stock of the N. P. after he got through with his purchases, and would continue to control that company unless they retired the preferred stock, or unless he sold it. Of course, he knew, during these negotiations, that Mr. Morgan and Mr. Hill, and the stockholders of the common stock of the N. P. who were co-operating with them or allied with them, claimed to control the N. P. by virtue of a majority of the common stock. He doesn't remember that they claimed to him during these negotiations that they had such majority of the common stock. That was the general talk. He doesn't think it was necessary for them to even make the statement. It was known by everybody. "I think it was not necessary for them to make that statement to me, because among the other statements, as I say, about the retiring of the preferred stock, was a statement made and published in the papers. Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed? A. Do you mean Morgan? Q. Yes. A. Do you mean the exact company? Q. Yes. A. My recollection is that he did not. In fact I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid or whether it was the

Influential voice in management.

Mr. Morgan did not disclose exact company for whom he was acting until payment was made.

amount of stock to be delivered; I think it was the amount of stock to be delivered. They supposed we had somewhat more stock than we really had.

"Q. When did you have your stock transferred on the books of the Northern Pacific Railway Company in the name of yourself and Mr. Pierce? (3140) A. I don't remember. It must have been some time before that. Q. It was prior to the annual meeting in October, wasn't it? A. I think so, yes. Q. And you had all your holdings transferred at that time? A. Practically all. I don't think it was all; I think nearly all was though. There may have been some of the stock held out; I don't remember. Q. During these negotiations, did the representatives of J. P. Morgan & Company, with whom you dealt, tell you that unless they organized a holding company and this stock was turned over to such holding company that the transaction would not go through? A. No. I don't think any such statement was necessary. Q. Well, was any such statement made? A. I don't remember that the question ever came up. This was a running negotiation, and it was difficult to tell what either side would do. I think until practically the last minute I didn't know what I would do."

(3140) JOHN W. CHAPMAN.

Chapman.

San Francisco. Hardware. Formerly rate clerk of O. R. & N.

For two years manager of the Pacific Hardware & Steel Company, at San Francisco. Previously connected with the O. R. & N. and S. P. at Portland. (3141) In 1904 witness went to Portland in the department of R. B. Miller, general freight agent of the O. R. & N. The latter afterwards became general freight agent of the O. R. & N. and S. P. lines in Oregon when the offices there were consolidated. When witness first went in there he was in the rate department, answering rate questions, and rate and tariff clerk, and after that took charge of the rate and tariff department. The rates were made by the traffic officials and turned over to the rate and tariff departments to handle the details. Miller made all kinds of rates—through and local rates. The joint rates between the Southern Pacific and the O. R. & N. were made, of course, after conference or correspondence with the San Francisco office. Miller also made through rates between Portland and eastern points; that is, by conference with the other carriers interested. After the offices were consolidated, witness had to do with the making up of tariffs on both lines. "Q. Southern Pacific clear through to the east, the O. R. & N. clear through to the east, as well as local tariffs? A. That is correct, yes, sir. Well, the tariffs all the way through to the east were not made by us. They were published by the Trans- (3142) continental Freight Bureau. Of course we did publish some tariffs on lumber and such like."

Making of rates.

The tariffs to Salt Lake, Utah, via Sacramento, were taken out before witness went to Portland. The rates to Salt Lake from Portland by the O. R. & N. were lower than the other way. Of course, you could move business the other way by the combination of locals.

Rates from Portland to Salt Lake.

Lumber from the Willamette Valley moved to Salt Lake via the S. P. to Portland, and the O. R. & N.—O. S. L. On Atlantic seaboard business the S. P. has always expressed a preference for its Sunset-Gulf route. "Business originating in other territories, they have not really expressed themselves between the El Paso and the Ogden gateways." Ships to Portland both by the S. P., the O. R. & N. steamers, and other steamers.

Routing of his business.

(3143) Ships to southern Idaho by steamer to Portland and O. R. & N. and O. S. L. Ships nothing to Idaho by Ogden, on account of the rates. There has been no material change in the rates to southern Idaho by Ogden since witness has been in the hardware business. Ships stuff in from the east by Panama, also the American-Hawaiian line. The time in transit from the factory in the interior points around Pittsburg or New England to San Francisco averages 65 or 70 days via Panama. The time in transit from New York is approximately 45 days. From New York to San Francisco by Tehuantepec it is about 28 days—you might say 30 and 37 days. One steamer on the Pacific side will bring two cargoes from the Atlantic. There is no difference in the length of time required to get the goods to New York, and get them loaded on the ships either by the Panama or the Tehuantepec route.

(3144) The American-Hawaiian boats are large steamers of about 12,000 tons, modern vessels equipped to handle heavy pieces of material. The P. M. boats are much smaller and older, and there are classes of freight they cannot handle. Structural material and large size plates, for instance. The P. M. boats sometimes spring a leak coming up the coast. They have had bad luck lately. The iron that cannot be shipped by the P. M. is a class of traffic, the largest percentage of which moves by rail.

LOS ANGELES, CAL., MAY 15, 1909.

Whittemore.

(3145) CHARLES O. WHITTEMORE.

Los Angeles. Lawyer. One of the incorporators of San Pedro.

Practicing lawyer since 1884. Has lived in Los Angeles a year and a half. Previously lived at Salt Lake. Was General Attorney for Utah and Nevada of the San Pedro Co. until July 1, 1907. Was one of the incorporators. It was incorporated March 20, 1901, for the construction, maintenance and operation of a road from San Pedro Harbor in California, through Nevada to Salt Lake City, and the construction of branch lines.

Property acquired prior to organization of San Pedro.

(3146) Previous to the incorporation, the promoters had acquired the Los Angeles Terminal Railroad property in California. That is about all that had been done in an active way. Certain maps and data which had been collected by the Utah & California Railway Company, and certain rights acquired by them in the location of a line of railway from Utah toward California were acquired by the gentlemen who were interested in the enterprise of organizing the San Pedro. That was a month or two prior to the incorporation of the San Pedro. They were acquired while the San

Pedro was in process of organization. The Los Angeles Terminal Railroad Company owned a line extending from Los Angeles to East San Pedro, and from Los Angeles to Pasadena, and a short branch line to Glendale, a suburb of Los Angeles. The first active work by the San Pedro Company was about April 19, 1901, when it took over the rights of the Utah & California to the right of way and grade from Uvada to Caliente, which was then known as Clover Junction, and from Clover Junction to Pioche, and assumed the active work of locating and constructing railroad grade in Nevada. On April 6th witness employed Mr. Deal, and sent him down with a force of men and teams, but that was done on behalf of the Utah & California.

First work.

(3147) About April 6th or 7th, 1901, a force of men was put on the old grade extending from Uvada to Clover Junction (now Caliente) to repair the grade and take possession of it. At that time no steps that witness knew of had been taken by the O. S. L. to take possession of that grade. Witness went down to Uvada the day following the commencement of work by the U. & C. When witness arrived on April 7th, he found the O. S. L. had assembled some construction material, and had a force of men laying track on this grade, on the Utah side of the state line. They had about 500 feet to lay before they came to the state line. Mr. Deal was at work at the Nevada line, and from there into Nevada. Mr. McCartney had been down over the line under witness' direction, doing some preliminary work, but he doesn't think any surveys had been made by the San Pedro. That was two or three months before. Witness had gone over the grade with Mr. McCartney, with a view to acquiring the old grade and right of way for the San Pedro when it should be organized. The O. S. L. continued to lay their tracks along the grade, and "we did all we could to oppose them and keep possession of the grade." (3148) In opposing them "we adopted pretty nearly every device that we could think of. We filled in the cuts with brush and timber and took possession of these tunnels; and they, in turn, as their track would be extended, having a very much larger force of men, would remove the obstructions and go ahead with their work. * * * Up to the 19th of April (1901) all our work was done in the name of the Utah & California Railroad Company (or Railway—I don't remember which.)"

Attempt to take old grade.

O. S. L. were laying track.

Opposed work of O. S. L.

O. S. L. removed obstructions and went ahead.

Witness thinks it was the 19th of April that the San Pedro Company took charge of the work themselves, or it was taken charge of in the name of that company from that time on. Witness remembers a suit brought in the United States Circuit Court for the District of Nevada, in which the Utah, Nevada & California Railroad Co. was complainant, and the Utah & California Railway Company and others were defendants. Witness was a defendant in that suit and also acted as one of the counsel for the defendants. The subject of litigation in that suit was the railroad grade that had been constructed from Uvada to what was then known as Clover Junction and from Clover Junction to Pioche, and the question of right of

Litigation over old grade.

way for railroad purposes from Clover Junction southwesterly to the Nevada-California state line, through the State of Nevada. It is about 175 miles from Clover Junction or Caliente to the California-Nevada state line.

Pleadings.

(3149-3164) Complainant's Exhibit 170 is a copy of the Bill of Complaint in the case of Utah, Nevada & California R. R. Co. vs. The Utah & California Ry. Co., the suit about which witness testified supra. (3165-3181) Complainant's Exhibit 171 is the answer of the defendant, the San Pedro, Los Angeles & Salt Lake R. R. Co. to the Amended and Supplemental Bill of Complaint in the same case. (3181-3213) Complainant's Exhibit 172 is the Amended and Supplemental Bill for Injunction and Relief in the same case. (3213-3223) Complainant's Exhibit 173 is the Amended Answer to the original Bill in the same case.

(3223) Complainants secured a Restraining Order upon the filing of the Bill after hearing. Witness was present at the hearing at Carson City, where the question as to whether the complainant should have a temporary injunction or restraining order was argued.

Temporary injunction against San Pedro.

(3224) As the result of that argument, the complainant, the Utah, Nevada & California, secured a temporary injunction restraining the defendants from interfering with the complainant in the occupancy of the grade from Uvada to Clover Junction, and from Clover Junction to Pioche. That is the case in which Judge Hawley wrote the opinion, which is reported in 110 Federal Reporter. Prior to the restraining order, and while this controversy was going on, the San Pedro Company was engaged in the survey and location of its line of railroad from Clover Junction southwesterly through the Meadow Valley Wash to the Nevada-California line. It had acquired the right of way over lands owned by private individuals, and maps were in course of preparation, for the purpose of securing a right of way over the public lands.

Complainant's Exhibit 174 is a copy of an affidavit of J. K. W. Bracken, who was acting as right of way agent for the San Pedro. It is sworn to on the 22nd of June, 1901. Witness remembers that the San Pedro road acquired through Mr. Bracken, the lands he mentions in the affidavit, either by deed or contract. Witness' recollection is that the affidavit was prepared under his direction and that it states substantially all the facts relating to the acquiring of the right of way.

(3225-3228) Complainant's Exhibit 174. (3229) Beginning at the end of the grade at Caliente, which was the subject of the temporary injunction, the San Pedro had acquired various rights of way over private lands for a distance of four or five miles. For a distance of five or six miles south from Caliente there were a number of ranches, in fact almost one continual line of private ownership, or private possession at least, and the San Pedro had negotiated with the occupants of these several tracts of land and had acquired, either by contract or deed, right of way for railroad purposes over the lands. The construction of a grade was started, connecting

Right of way of San Pedro over private lands.

with the grade in dispute, and it was extended through the Culverwell ranch, probably half or three-quarters of a mile, and then at other points through private lands beyond there. "At the dividing line between the old grade and the new grade we put up a barricade and a notice that that grade was the property of the San Pedro Company, and warning people to keep off." When the O. S. L. reached that point they ran their track-laying machine through the barricade, and started to lay track on the grade that the San Pedro had constructed. Witness submitted affidavits showing these facts to Judge Hawley, and on his ex-parte motion granted an injunction to the San Pedro, restraining the Utah, Nevada & California from interfering with the San Pedro in the location or construction of its line from Clover Junction to the Nevada-California state line, that is through the Meadow Valley Wash.

O. S. L. enjoined.

(3230-3232) Complainant's Exhibit 175-A. Restraining order of Judge Hawley, dated April 27th, 1901. (3232) Complainant's Exhibit 175-B. Temporary injunction, dated July 22nd, 1901. (3233) Complainant's Exhibit 175-C. Restraining order of Judge Hawley, dated August 9th, 1901.

(3235) After obtaining the restraining order above referred to, the San Pedro went ahead with its work below Caliente, and the work of the Utah & Nevada to California, below Caliente, was suspended. A joint survey was then arranged for by a conference of the representatives of the two companies. (3236) The old grade didn't extend below Caliente. That was from Uvada to Caliente, and thence north to Pioche. There were tunnels on it between Uvada and Caliente. The San Pedro made a line of location from Salt Lake southwesterly, for a considerable distance, and then preliminary surveys had been made in Nevada, running a preliminary line westerly from the line of the O. S. L. practically all the distance. Mr. McCartney located the preliminary line that left Uvada and Modena to the east, and obviated all tunnel work. Witness thought it would have been very much more expensive construction, but it avoided all tunnels. That line would have connected up with his line from Caliente on through the Meadow Valley Wash, and would have avoided all of this disputed right of way between Caliente and Uvada.

Joint survey arranged.

(3237) Up to the time Senator Clark announced at the dinner of the Alta Club, in Salt Lake, that he intended to build the road to San Pedro, no steps had been taken by the O. S. L., that witness knew of, looking to the construction of a line of railroad, in the same direction, unless it might be the construction of a piece of road from Milford to Modena by the Utah & Pacific. That was several years before. The gentlemen with whom witness was associated procured a tax title to this old grade from Uvada to Caliente, thence to Pioche.

O. S. L.'s activities began after Senator Clark's announcement.

(3238-3261) Complainant's Exhibit 176, Amended and Supplemental Bill of Complaint of Utah, Nevada & California R. R. Co. against John Simpson and others, as County Commissioners of

Tax litigation.

Lincoln County, and Amended and Supplemental Petition and Complaint in intervention of the San Pedro Company, and the decree and findings of the Court in the same case. The answer in the foregoing case was sworn to June 1st, 1901; the complaint some day in May, 1901, the decree on the 29th of June, 1903; and the court in the decree recites that the San Pedro Company, by C. O. Whittemore, its attorney, asks leave of the court to withdraw its original and also its amended and supplemental petition and complaint of intervention, which permission was granted. That was the 29th of June, 1903, after the settlement had been arrived at between the San Pedro and the O. S. L. It was done pursuant to agreement and stipulation with other parties in the case, after all the differences had been disposed of.

O. S. L. survey completed first.

(3262) The San Pedro Co. was engaged in the location of a line of railroad south of Caliente, and the Utah, Nev. & Cal. were also engaged in locating a line through, and owing to the greater activity of the engineers of the Short Line, their survey was completed much ahead of the survey of the San Pedro, and when they offered their maps for approval to the Secretary of the Interior a protest was made on behalf of the San Pedro. The matter never reached a hearing, though some testimony was taken. Neither of the maps which had been prepared were finally accepted by the Department. All of those maps were withdrawn and new maps filed of a subsequent survey made by the San Pedro. (3263) The first thing that attracts witness' attention was the wonderful rapidity with which the O. S. L. survey was made. Part of the distance a surveyor's chain was attached to the back end of a wagon. The San Pedro surveyors had been out from Caliente eight or nine days, and the surveys in Utah and Nevada overtook and passed them the first day. The latter survey was in the nature of a relocation of an old survey. Deal and Mendenhall were a firm of railroad contractors who did some work for the San Pedro Company. They continued their work in the Meadow Valley Wash after the injunction was obtained against the Utah, Nevada & California. Their contract covered about 60 miles of grade from Caliente southwesterly, which would take it entirely through the Meadow Valley Wash.

Utah and Cal. maps.

(3264) Witness didn't think he had obtained the stock of the Utah & California Co. for the rights which they claimed, but merely a conveyance of those rights. The U. & C. had some maps and profiles filed in the Land Office at Carson City, under the Act of March, 1875. Thinks their articles of incorporation were not filed in Nevada until witness started these negotiations, about April 15, 1901. The articles of incorporation of the U. & C. were amended, so as to give it the right to own a railroad in Nevada, along in April or May, 1901. The old maps were filed without having complied with the laws of Nevada.

(3265) There was a contest before the Land Office as to whether the U. N. & C. maps covered the Uvada, Caliente and Pioche line,

and the maps of the U. N. & C. and the old O. S. L. & Utah Northern maps, and the maps of the U. & C., were considered by the land officers, and Mr. Williams announced that the purpose of the incorporation of the U. N. & C. in 1898 or 1899 was to complete the construction of the line through. (3266) Witness knew at the time that he was negotiating for the Utah & California maps that a claim was being made by the Utah, Nevada & California Company for the same right of way, for the purpose of building a railroad on it. Before the vote of the Board of the Utah & California Company was had on the 9 day of March, 1901, witness was advised of the claim of the Utah, Nevada & California and the Short Line Company to that roadbed, and the vote passed for witness' appearance before the register and receiver was for the purpose of resisting the claims made by the promoters of the San Pedro Company. (3267) As a result of the hearing at Carson, the local land office, the register and receiver on the 5th of April, 1901, decided in favor of the U. & C. An appeal was at once taken to the Secretary of the Interior and on April 24, 1901, the matter was decided in the Department of the Interior, and the decision of the local land office reversed.

Witness advised as to claim of Utah, Nev. and Calif. to roadbed.

The decision of the local Land Office as well as the decision of the Secretary of the Interior set forth the opinion of the United States Circuit Court, District of Nevada, in the case of Utah, Nevada & California Railroad Co. against Utah & California Ry. Co., et al., are offered in evidence and are set forth on pages 3267 to 3272.

(3273) Witness plowed a furrow through the grade, and dug quite a trench by the Nevada-Utah line, to keep the O. S. L. from laying their track, and protested against their right to lay track on the grade in Nevada; also put barricades of various sorts below, on the grade. After the injunction, witness let the O. S. L. remove the barricades. (3274) Witness' occupancy of the grades was made in the name of the U. & C., and the corporate action amending its articles was not taken until after his entry upon the grade. Witness had a man at Uvada probably 30 days before he started, and kept him posted as to what was going on. The articles of the San Pedro were filed March 20, 1901. Organization effected the day following. The O. S. L. ran its construction train against the barbed wire fence at the Culverwell ranch, August 4th or 5th, witness thought. (3275) Witness thought the transfer of the proposed line from the O. S. L. and U. N. to the U. N. & C. was made some time in April or May, 1901. "Q. But it also claimed, did it not, that the Utah, Nevada & California board of directors adopted the line of survey delineated upon its maps and profiles, filed in the land office at Carson by it, made on May 9, 1901, and that the vote of adopting that line of survey from Caliente southwesterly was made by the board of directors of the San Pedro Company on its behalf on the 22 of May? Those were the claims of the respective parties, were they not? A. I don't remember the dates, but that is substantially my recollection." At any rate, the claim was by the

Filing of San Pedro articles.

Adoption of survey of Utah, Nev. and Cal.

Utah, Nevada & California that their board of directors had voted first and made the first adoption. That was the gist of the controversy as it existed at that time, and the basis of the action of the different people. While the San Pedro was procuring rights of way from some of the ranchmen southwesterly from Caliente, the O. S. L. was doing the same thing. The O. S. L. also had some parties of workmen down there, staking out work and laying out work and doing some work. There were two grading forces, somewhere southwesterly from Caliente, at the same time. In some places witness' people encroached on the Short Line right of way as claimed by it, and in some places the converse was true. In other words, there was a mix-up of the work all the way along down the Meadow Valley Wash. Both parties were active in claiming the whole thing, each one claiming for himself.

O. S. L. was also procuring right of way from ranchmen.

San Pedro encroached upon O. S. L. right of way.

(3276) The O. S. L. party hastily checked up the old survey on the ground. They didn't pretend to chain that thing, except to fix angles and P. C.'s and P. T.'s (point of curve and point of tangent), but the engineer swore to an affidavit on the map that it represented an actual survey on the ground. He was one of the men who originally made the survey. Because of the alleged insufficiency of the survey, the protest was filed by witness on behalf of the San Pedro Co. No final decision was ever reached in respect to the matter, either in the Land Dept. or in the courts. The O. S. L. negotiated with Culverwell, and on his refusal to concede them a right of way, they brought suit to condemn. (3277) At the time they smashed down witness' fence, they had not acquired a right of way, except so far as the survey across the land would give them a right. From about the time the controversy began, the right of way men of both companies were securing right of way wherever they could get it, entirely through the Meadow Valley Wash. One road would get it one place, and another in the next place, and so on, and in some places both companies had it through the same piece of private ownership.

San Pedro protest against O. S. L. survey.

Clark.

(3277) J. ROSS CLARK (2).

Statements in affidavit filed in Carson City.

In June, 1901, witness made an affidavit to be used in the Federal Court, (3278) in the controversy at Carson, stating that the San Pedro had been organized in good faith, for the purpose of constructing the lines of railroad mentioned in its articles of incorporation, and that there had been paid in, in money and property, $2,501,600; that the authorized capital stock was $25,000,000, which it was proposed to sell; that since its organization it had acquired the terminal facilities in the City of Los Angeles testified to by Mr. Whittemore. Witness thought that those terminals cost approximately $75,000 or $100,000. The entire capital stock of the San Pedro is now issued.

Los Angeles terminal facilities.

(3279) The terminals were acquired with the Los Angeles Terminal Railway Company, not in addition to it. In the affidavit of witness already referred to it is also stated that since the organiza-

tion of the corporation there has been expended in carrying out the purpose for which it was organized more than $500,000 in cash in addition to the amount expended in purchasing said property of the Los Angeles Terminal Railway Company. And then witness speaks further on of having purchased a lot of steel rails and cars and some right of way in California. The $500,000 referred to included whatever had been purchased up to that time, including lands adjacent to the depot, the right of way secured on the line between Los Angeles and Riverside and whatever cars that had been paid for. Additional expenditures.

They had also contracted for about 8,000 tons of steel and some of it had been delivered; not all of it. The affidavit further states the company has adopted plans and specifications for the laying of a main track between Salt Lake City and the Bay of San Pedro, of rail to weigh not less than 75 pounds per yard, upon a thoroughly well ballasted and constructed track so that its said line when completed between the city of Salt Lake and the Bay of San Pedro shall make and constitute a high-speed through line, and that affiant believes that the said plans and specifications will result in the said corporation possessing the best constructed (3280) and safest line of railroad west of the Rocky Mountains. At the time those plans were adopted they provided for the construction of a line over the Cajon. The plans mentioned in the affidavit contemplated a through line to be constructed by witness to Salt Lake City. Plans for main track.

The affidavit further states that witness proposed to relay the line between Los Angeles and San Pedro with heavy rails, and that he had completed reballasting 22 miles, and laid down five miles of new track. Witness states these facts to be correct, and that the line between Los Angeles and San Pedro was entirely rebuilt, the banks widened and new rails and ballast put down. The affidavit further states that the corporation has surveyed 110 miles of its proposed main line from Los Angeles toward Salt Lake and has definitely located 90 miles of the same and has secured nearly all of the right of way for 30 miles thereof from Los Angeles toward Salt Lake, and is now engaged in securing right of way with all convenient dispatch and will continue the work of securing the same. Survey of main line.

The 110 miles therein referred to would extend to about 60 miles beyond Riverside, some point between Riverside and Barstow. 90 miles would take them to the summit of the Cajon Pass. The statements made in the affidavit were correct as the facts existed at that time. The 30 miles of right of way commenced at Hobart Junction three miles below the passenger station of the S. P. here running east. It was located in different places. The affidavit further states that the corporation had purchased 50 ballast cars, one steam shovel and unloader, several hundred flat cars and that it had actually begun the work of construction upon the new portion of its main line between (3281) Los Angeles and Salt Lake, and proposed continuing the construction of the same as fast as the Equipment purchased.

line was located and the right of way secured. The affidavit in that respect represented the actual facts as they existed at that time.

Ties purchased.

The affidavit also stated that they had ordered about 300,000 ties, a large number of which had been delivered and that it was engaged in placing almost daily orders for material and equipment. That statement was also true. The affidavit further stated that the surveyors of said corporation had surveyed about 140 miles of the line west of Salt Lake, and that surveyors were actively engaged in carrying on the work of locating the said line; and that there were four complete surveying parties in the field. Those statements were also true.

Intention to complete road.

The affidavit further stated that the stockholders of said corporation were men of large means, and affiant believed that they had entered upon the prosecution of the purposes for which the corporation was organized in good faith and with an honest intention of completing said railroad and branches. Witness states those facts were also true. The affidavit was made to be used in the controversy at Carson City, and was so used. (3282) At the time of making the affidavit there had been no track laid east from Hobart.

Gibbon.

(3282) T. E. GIBBON (2).

Senator Clark's Salt Lake speech.

(3283) Remembers a speech at Salt Lake, at which Senator Clark stated he intended to build the San Pedro as an independent road. Witness first met Senator Clark in 1899. At that time witness was Vice-President and General Attorney of the Los Angeles Terminal Railway Company. The stockholders, who were St. Louis people principally, had asked him long before that, to do anything he could toward promoting the line of railroad to Salt Lake City. Through Mr. Ross Clark he brought the matter to the attention of Senator Clark.

(3284) By the Autumn of 1900 the matter had taken definite shape, and the Senator had determined to take the leading part in organizing the proposed corporation to build the line from Los Angeles to Salt Lake. Thinks it was in the Autumn of 1900 that he had negotiations with the City Council of Salt Lake, to secure possession of what is called Pioneer Square.

Representations of witness to City Council of Salt Lake.

(3285) Witness represented to the City Council that the intention was to build an independent line, a line which would be competing with the S. P. The Los Angeles Terminal Railway Company was originally incorporated with the idea of securing terminal facilities, which were to be used by the U. P., which at that time it was supposed was to build a line into Los Angeles. An ordinance was passed, in 1890 or 1891, naming the U. P. as the beneficiary. (3286-3287) The U. P. surveyed down through Nevada, and built the line south of Milford, and did some grading and tunnel work in the state of Nevada. After that they did no further work toward building a line from Salt Lake to Los Angeles, that witness knew of. In 1899 witness talked to Mr. Harriman at Seattle about extending the U. P. line to Los Angeles, but it didn't result in any-

thing definite. That was after Mr. Harriman had perfected the organization of the U. P.

NEW YORK CITY, JUNE 10, 1909.

(3287) T. H. ROSSBOTTOM.

Rossbottom.

Secretary Panama Railroad.

Employed by Panama Railroad since 1887. Now Secretary and assistant to Vice-President. (3288) Exhibit 177, Statement of tonnage, 1898 to 1908, both ways, between New York and San Francisco via Panama. From the expiration of the contract with the Pacific Mail Co. in 1893, the Panama Company operated a steamship line on the Pacific in connection with the North American Navigation Company, up to the contract of December 16, 1895. Then, when that contract expired in 1900, the Panama Company operated a steamship line of its own on the Pacific coast until the contract of 1902 was made effective. Since then Pacific business handled exclusively by the P. M.

(3289) Has no relations with the French line running from San Francisco to Panama, but has a through billing arrangement with the Kosmos Line, a German line, but, of course, the Panama Company could not carry San Francisco cargo in those steamers, because they are operated under a foreign bottom. You cannot ship goods from one American port to another in other than American bottoms. There is no other line of boats, of American register, except the P. M., running from Panama to San Francisco, and has been none since the Panama Company took off their own line. Notice of the cancelation of the contract of 1902 was given January 12, 1905, and the contract was terminated July 12, 1905, by the Panama Company. Since then business with the P. M. has been done practically on the same basis, with the exception that the exclusive privilege given to the P. M. to operate between San Francisco and Panama on through business, was canceled. The exclusive privilege was canceled, but there is no other line, so that the arrangement is practically exclusive. There has been no change in actual relations.

Cancelation of contract with Pacific Mail.

(3290-3291) Exhibit 178, letter from Pacific Mail Steamship Co., to Panama Company, notifying latter that six months from February 12, 1909, they would no longer be governed by the terms of the working agreement carrying freight on a through rate of 40 cents per hundred pounds, or $8 per ton, of which the P. M. received, after deductions for loading and unloading, &c., $2.35 per ton for the haul of over 3,000 miles to La Boca. (3292) The proposition referred to by Mr. Schwerin in the foregoing letter (Exhibit 178) was that he would establish a direct line from Panama to San Francisco, if the Panama Railroad would, instead of giving him 50% of the through rate, guarantee him a net return of $5 per ton. By net return, witness meant over and above wharfage and cranage charges at La Boca. La Boca is now called Balboa. It is on the Pacific side of the canal zone.

Notice of Pacific Mail.

Various contracts.

(3293-3310) Complainant's Exhibit 179 is Contract of December 16, 1895, between the Panama Railroad Company and the Pacific Mail Steamship Company. Witness didn't know when the P. M. became a part of the Panama route. The Panama route to the Pacific coast was opened in 1850. A contract was made with the P. M. in 1872, so that the P. M. has been a part of the route at least since 1872. (3311-3316) Complainant's Exhibit 180, Supplemental Contract between Panama Railroad Company and Pacific Mail Steamship Company, dated June 11, 1902. (3316-3321) Complainant's Exhibit 181, Contract of October 1, 1872, between Pacific Mail Steamship Company and U. P. R. R. Co. (3321-3325) Complainant's Exhibit 182, Agreement between the Transcontinental Association and the Pacific Mail Steamship Company, dated October 1, 1889.

Change following cancelation of contract.

(3325) The only change after the cancelation of the contract of 1905, was that business with Central America and Mexico was worked with the Kosmos Line, as well as with the P. M. There is no change on San Francisco business. Previously all business had been done with the P. M. The Panama Railroad Company in 1905 gave notice to the P. M. Company of terminating the arrangement made in 1902. That was after the Government acquired control of the Panama Railroad. But, notwithstanding that notice, practically the same arrangement was continued by mutual agreement, without any contract for any definite period. There was no change at all in the arrangement after 1905 from that provided by the contract of 1902. Witness worked for San Francisco business after 1905, and up to date exclusively with the P. M. Business with Central America and Mexico was worked with the P. M. and also with the Kosmos Line. There was that change; but that did not affect the San Francisco business. It did, however, affect the P. M.

Foreign lines admitted as connections of Panama railroad, on Central American and Mexican business.

Under the contract of 1902 witness worked all business for the Central American and Mexican ports with the P. M.; whereas, after 1905, he admitted foreign lines as connections to handle the business to Central American and foreign ports. (3326) He understood the question of the defendants' counsel to refer only to San Francisco. That is what he had in mind. The arrangement has been worse for the P. M. since the notice of 1905 than under the written contract before; because they had some competition after 1905. "Q. They had pretty active competition for the Central American and Mexican business? A. Only one year. The Kosmos Line has only been granted through-billing privileges about one year. * * * Q. Didn't it do business before that? A. Not with the Panama Railroad. Q. But for the last year, at least, foreign lines have been accorded through-billing privileges for Central American and Mexican ports by The Panama Railroad Company? A. One foreign line. Q. Yes; one foreign line. And that was, of course, at the expense of the Pacific Mail? A. Undoubtedly."

The Panama Railroad Company in 1905 notified the P. M. of the termination of the contract of 1902; and under that contract of 1902

the Panama Railroad Company worked exclusively with the P. M. for Pacific coast business, including Central American and Mexican ports, as well as San Francisco. Since 1905 the same arrangement with respect to the interchange of business between the Panama Railroad Company and the P. M., as that provided by the contract of 1902, has continued, except that the Panama Railroad Company (3327) has admitted another line to the Central America and Mexico business with the P. M. "Q. The question just now was whether this arrangement that Mr. Schwerin, by his letter of February 18, 1909, gave notice of terminating was not the same arrangement that the Panama Railroad Company undertook to terminate in 1905, except that it is worse for the Pacific Mail, in that the Panama Railroad Company is now doing business to Central America and Mexican ports with the foreign line? A. No; I don't see that it is any worse for the Pacific Mail. Q. Don't you think that the present arrangement is worse for the Pacific Mail than that under the contract of 1902? A. Undoubtedly if they had exclusive privilege over the Panama Railroad. Now they have not. Of course, in that sense, if that is what you are driving at—— Q. That is what I mean. A. Yes."

Under 1902 contract Panama Co. worked exclusively with Pacific Mail.

(3327-3329) Panama R. R. Co.'s letter, dated March 1, 1909, in reply to Exhibit 178, set forth. (3329-3330) Pacific Mail Steamship Co.'s letter of May 18, 1909, in reply to foregoing. (3331) Letter of May 13, 1909, from Panama Company to Pacific Mail. (3331-3332) Panama Company's reply, dated May 24, 1909, to Pacific Mail Co.'s letter of May 18, 1909. (3332-3333) Pacific Mail Steamship Co.'s reply of May 25, 1909. (3333-3334) Pacific Mail Steamship Co.'s letter to the Panama Company, of February 18, 1909. (Same letter set forth, pages 3290-1.)

Correspondence.

(3335) Witness has not been advised if there has been any change in Mr. Schwerin's notice of termination of the existing arrangement. He has received advices that Schwerin has agreed to have his traffic men and the Panama traffic men get together previous to the expiration of the notice, on August 13, and see if some plan cannot be recommended to the Secretary of War for a continuance of relations, and when that plan has been submitted to the Secretary of War, the P. M. has agreed to give him sixty days to make up his mind. (3336) Panama Company makes the rates from New York to San Francisco, and the P. M. from San Francisco to New York. P. M. has a voice to this extent, that the Panama Company cannot go below $8 a ton, unless they absorb the difference out of their own proportion, that is, the contract of 1902. The same is true of the P. M. on shipments the other way.

Plans for continuance of relations.

(3337) The larger part of the Panama Company's cargoes southbound is material and supplies for the Panama Canal Zone; northbound the Panama Company is absolutely dependent on the Pacific coast cargo, so it could afford to carry business from Panama to New York a great deal cheaper than the P. M. could carry it from San Francisco to Panama. Everything carried northward, except the

Panama's southbound cargoes.

cost of handling, means just so much gain to the Panama Company. A large business from Europe is delivered by the Panama Railroad to the P. M. If on the morning of sailing, the Panama Company receives word from the Washington office, or the Commission, that they are obliged to have supplies furnished promptly, the Company makes room for them; otherwise no preference is given to Canal business over commercial business. (3338) The P. M. out of their half pays to the Panama Company 80 cents a ton for wharfage, and 10 cents a ton, if they want to make use of the Panama electric cranes, rather than their own windlass. They usually take advantage of the cranes. The practical result is the P. M. gets $3.10 a ton, and the Panama Company $4.90.

Payments by Pacific Mail to Panama Co. for wharfage, etc.

(3339) In the operation of a steamship line, the wharfage is always considered part of the steamship expense, no matter to whom they pay it. (3340) The P. M. boats stop at no place in California, except San Francisco. Witness doesn't think the Kosmos Line does either. They certainly don't in connection with the Panama route. They may with the Tehuantepec route. They interchange with the latter route. Traffic moves to Colon from Galveston, New Orleans, and Baltimore, as well as from New York. That, however, is not destined to San Francisco. It comes in on foreign steamers, which cannot carry port to port freight. The Panama steamers are the only American registers into Colon. All the port to port business goes over the Panama Company and the P. M. exclusively. The P. M. takes 21 to 24 days from San Francisco to Panama, and the Panama ships from 5½ to 6½ days from New York. The distance from New York is 1,976 miles, and from Panama 3,200 miles.

Time.

(3341) Doesn't think the Panama Company has ever received any business destined to New York from the Kosmos Line, from Mexican and Central American ports. Most of the business is to Hamburg, London and European ports, so that the only interest the Panama Company has in the business is the rail haul. (3342) The P. M. has a good local business to Panama, merchandise consigned to the local merchants there. Doesn't think there is very much for the Isthmian Canal Commission. Notice from the Panama Company to the P. M. Co. of January 12, 1905, canceling contract of 1902. (3343) After the issuance of this notice, and before it became effective, the working agreement with the P. M. was formed, which witness testified to.

Service and cargoes.

(3344) Panama ships leave New York for Colon every six days. The P. M. ships sail from Panama to San Francisco three times a month. Once in a while they skip a departure, as they did at the time they lost one of their steamers about three months ago. That ten days' schedule has been in operation about three years. Previous to that there was a weekly service. For the last three months the Panama steamers have had full cargoes south-bound. Previous to that, for about a year, they sailed with half cargoes. Cargo is made up of material and supplies for the canal and freight

for Central American and Mexican ports, and also for San Francisco and South Pacific ports. On Central American and Mexican business, Panama Company interchanges traffic only with the P. M. The Kosmos Line brings some cargo to the Panama Railroad from Central America to Europe, but the Panama Company has carried no freight for Central American or Mexican points, which has been delivered to the Kosmos Line. Kosmos line.

(3345) Delivers none to the Kosmos Line, unless the consignee so requests, and no such request has yet been made. If no directions are given by the shipper, the Panama Company can deliver the freight to whoever it chooses. The purpose of the $8 rate was to try to force cargo that way, in order to give the Panama Company a north-bound load. Witness didn't consider that an extraordinarily low rate. When they operated their own line, they established rates as low as $6 a ton from San Francisco to New York. That was in 1894 or 1895. That wasn't an all-round rate applicable to everything, but only to special articles. There are only about half a dozen commodities coming from San Francisco to New York. The majority of them are goods that take the low rate. The Panama Company lost money on the Pacific Coast Steamship line, because they ran a direct line between San Francisco and Panama, but the earnings of the railroad and of the steamship line on the Atlantic helped to reduce the loss on the Pacific. "Q. In doing that part of the business that the Pacific Mail does now, you lost money on it, didn't you? (3346) A. Yes." On the Atlantic side the steamships paid the Railroad Company wharf charges of $35 a day. Witness thought that was less than the P. M. paid on the Pacific side, but the amount depends on the cargo brought to the ship. An arithmetical computation on a vessel carrying 2,000 tons, taking a week to unload, showed that the charge at La Boca would be $1,600 as against $245.00 at Colon. The terminals at Panama lose money. Rates. Panama Co. lost money on its Pacific Ocean line.

(3347) The accounts are not kept separate for the ports at Colon, but the investment is not so large as at La Boca. The Panama ships on the Atlantic side are now on a profitable basis, but generally, up to last year, they were unprofitable. The railroad has always been profitable, except possibly from 1893 to 1895. Coal for the steamers on the Pacific coast is enormously expensive, as compared with the price on the Atlantic. There hasn't been any great scramble by American lines to take business on the Pacific coast at the 15½ cent rate. The Panama steamers make no stop between New York and Colon. The division of 27½ per cent. to the steamship line on San Francisco business would be $2.20 a ton. Out of that the Panama Company has to pay stevedoring at both ends, and port charges at Colon, the wharfage charges at Colon being $35.00 a day; and also has to pay whatever terminal expenses there are in New York. (3348) "Q. So that, even taking out the 90 cents as Judge Lovett did from the $4.00 accruing to the Pacific Mail leaving them $3.10, they have $3.10 as against your steamship Coal very expensive on Pacific side.

line $2.20, and out of the $2.20 you have to pay your wharfage charges? A. Yes." The commodities moving from San Francisco to New York are few in number. They consist of wine, canned goods, lead, wool, rags and horns: The ships of the Panama Company that didn't make money ran direct from San Francisco to Panama. They did not have the advantage of the Central American and Mexican business enjoyed by the Pacific Mail. On the Government's supplies shipped from New York for the Panama Canal the rate is $4.50 a ton; but most of the goods are delivered now at Colon by the contractor. On that the Panama Company gets as low as $2.25 a ton and as high as $5.50 a ton.

Rate on Government supplies.

Division of rates.

According to this division made by the Panama Railroad Company between its ships and its rails and its wharves, the Atlantic ships of the Panama Railroad Company get about 11 cents a hundred (3349); but out of that they have to pay their wharfage. "Q. So, if I am correct in assuming that the proper figure is, according to your statement of the wharfage at Panama of $3.10 net to the Pacific Mail, the Pacific Mail gets 15½ cents a hundred for the haul of 3,200 miles from San Francisco to Panama, and the Atlantic boats of the Panama Company get 11 cents a hundred for the haul of 1,976 miles from New York to Colon? A. Yes." (3349) The $8 a ton rate mentioned in the correspondence is applicable only to traffic moving from San Francisco to New York. The minimum rate west-bound is $9 a ton, the rates west-bound being figured on a basis of a percentage below the rates of the transcontinental railroads; 30% and 40% on L. C. L. and carloads respectively.

(3350) The percentage was changed from 20% and 30% respectively about a year and a half ago, at the instance of the Panama R. R. Co. It found it could not get enough business on the smaller differential. The American-Hawaiian rates average about the same as the Panama. In some cases they are lower, and in some higher. The Panama Railroad stock is owned by the Government. It is part of the Panama Canal purchase. (3350-3351) Letter of February 15, 1909, from Panama Company to P. M. (3351-3352) Letter from Panama Company to P. M., dated May 13, 1909.

White.

(3352) FRANK W. WHITE, (2).

An employee of the Interstate Commerce Commission, who has already testified.

Various exhibits giving information as to rates and tariffs.

(3353) Complainant's Exhibit 183-A is a statement showing class rates from Portland to San Francisco, from April 3rd, 1888, to date. Complainant's Exhibit 183-B is a supplement to statement No. 1688, showing emergency rates between Portland and San Francisco, effective December 1st, 1895. Complainant's Exhibit 184 is a copy of tariff showing rates between San Francisco and Portland, effective December 1st, 1895. It is the emergency tariff mentioned in Exhibit 183-B. Complainant's Exhibit 185 is the tariff that supersedes the one that was just offered in evidence and is a tariff

naming rates from San Francisco to Portland, effective December 15th, 1895.

(3354) Complainant's Exhibit 184. (3355) Complainant's Exhibit 185. (3356) Complainant's Exhibit 186 shows rates between San Francisco, Sacramento, Stockton, Marysville, Oakland, 16th Street and San Jose and Utah common points, effective December 12th, 1887. The pages attached are instructions from the general office of the Southern Pacific Company to its agents in California. (3357-3358) Complainant's Exhibit 187 is a special tariff on canned fruit and vegetables from Portland, Astoria and San Francisco to Salt Lake City, Montana common points and Union Pacific Eastern Terminals, effective June 29th, 1888, filed with the Commission by the Oregon Railway & Navigation Company.

Various exhibits giving information as to rates and tariffs.

(3358-3360) Complainant's Exhibit 188 is a Transcontinental Association west-bound tariff, effective January 15th, 1891, from common points east of the 97th Meridian on roads in that Association, and points east thereof on roads with which that Association has agreed basis of division, or from which arbitraries or local rates are allowed east of Association's eastern terminals, to San Francisco, Sacramento, Marysville, Stockton. It is the tariff that contains notice of the abrogation of the Canadian Pacific differential.

(3361) Complainant's Exhibit 189 is a statement showing the rates on wool, in grease, carloads, minimum weight 20,000 lbs., from points on Oregon Short Line R. R. to New York, all-rail, in comparison with rates from points on Southern Pacific System, via El Paso and Sunset-Gulf Routes, except as noted. Complainant's Exhibit 190 is a statement showing rates on classes, and two commodities, between Portland and Ogden and Salt Lake City, via O. R. & N. and O. S. L., in comparison with rates via Southern Pacific Company, west-bound. (3362) The effect of the first foot note on Exhibit 190 is that after May 15, 1901, the rates shown there no longer apply from Utah common points to Portland, but there was substituted for them the Colorado rate, which was much higher—that is by the Southern Pacific, the rates on the Short Line remained the same.

(3363) Complainant's Exhibit 190. (3364) Witness selected potatoes and rough onyx, in addition to the classes, in making up the statement, because the commodities in the tariffs at that time were not carried through for a sufficient length of time, with the exception of the two that are there. "In fact it was easier for me to put them in than anything else, that is all. MR. LOVETT. Were there no rates on post-holes in that tariff? WITNESS. None that I saw." (3364-3365) Complainant's Exhibit 191 is a statement showing rates on classes between Portland and Colorado common points via O. R. & N. and O. S. L. in comparison with rates via S. P. It applies both ways. From July 20, 1898, until January 1, 1909.

(3366) Complainant's Exhibit 192 is a comparative statement of the east-bound rates between Portland, Salt Lake City and Ogden,

from March 20th, 1899, to December 8th, 1908, over the Southern Pacific on the one hand and the O. R. & N. and O. S. L. on the other. On May 15th, 1901, the rates were canceled by Supplement 63 to Southern Pacific Company, I. C. C. 1390. That seems to have taken out the rates, with the exception of the lumber rate. It remained in at 40 cents as against 37½ cents by the other line, from December, 1907, but that 40 cent rate by the Southern Pacific has not been in effect since 1905, or witness thought 1903.

Various exhibits giving information as to rates and tariffs.

(3367) The rates were canceled, effective May 15, 1901, by Amendment 2 to S. P. I. C. C. No. 1683, which is tariff on lumber and articles shown therein, from stations on S. P. and other points to Utah points. September 26, 1901, all rates on lumber and articles of lumber named in tariff and amendments, from points in Oregon to points on the line of the U. P. and O. S. L. in Utah, were withdrawn. "Combination of locals govern." That is Amendment 4 to the same tariff. Exhibit 192, in so far as it refers to a lumber rate by the S. P. of 40 cents, December 1, 1900, is defective in that it does not state the time that it was taken out. (3368) Complainant's Exhibit 192.

(3369) Exhibit 193, Statement showing class rates from New York to Colorado common points, sea and rail, via Norfolk, Va., from May, 1899, to date. Witness has checked up the rates shown on Exhibit 193 with the rates by the gulf routes to Colorado common points shown on Complainant's Exhibit 81-D (see page 872), and the rates are the same. (3370) Exhibit 194 is a statement showing class rates from New York to Colorado common points, via sea and rail, via Savannah, from June 1, 1904, to date. (3371) It is stipulated that the sea and rail rates to Utah common points through Norfolk, Newport News, Portsmouth, Va., Savannah and Brunswick, Ga., and Charleston, S. C., are, and for at least fifteen years have been, the same as through the gulf ports. Complainant's Exhibit 195 is a statement showing rates on ore and concentrates (carloads) from stations on Phoenix & Eastern to Humboldt, Arizona, in effect February 3, 1906,

Exhibit 196, Statement showing rates on ore, concentrates and copper matte, carloads, from stations on Phoenix & Eastern to Humboldt, Arizona, in effect June 1, 1907, and September 10, 1907, as noted. The rates in Exhibit 196 superseded those in 195, the rates in Exhibit 195 having been canceled on June 13. (3372) Complainant's Exhibit 196. Exhibit 197 is S. P. tariff through rate, No. 740, showing rates on wool in bales from points on the R. G. W., Ogden to Thistle, Utah, and points between, also Nebo and Salina, Utah, and points between, to New York, Boston and Philadelphia, effective June 15, 1894, filed by the S. P. Co. Exhibit 198 is a duplicate of the tariff just described, filed by the Rio Grande Western Railway four days later. (3373) Complainant's Exhibits 197 and 198. (3374-3378) Exhibit 199, certain tariffs on wool in bales, filed by the Rio Grande Western, for an easterly movement from points named there, to the east.

NEW YORK, FRIDAY, JUNE 11, 1909.

(3378) FRANK W. WHITE (2) Testimony Resumed. White.

Attention called to error in Exhibit 81-E, which should read, the foot-note to 81-A, instead of 81-D. The transcontinental rates concerning which witness prepared statements, include the following lines: Can. P., G. N., N. P., U. P., (including with it the O. S. L. and O. R. & N.), and also the U. P. line in connection with the Central Pacific to San Francisco, the Atchison, and the Sunset. Wherever the rates do not apply to certain points, the exceptions appear on the statements. (3379) In Transcontinental Freight Bureau west-bound tariff No. 1-G, I. C. C. No. 375, effective January 18, 1904, there is an exception on the front page, as follows: "The rates provided herein will not apply to points in California by Canadian Pacific, Great Northern or O. R. & N. in connection with the S. P. via Portland."

Various exhibits giving information as to rates and tariffs.

(3380) Another exception reads: "Rates provided herein will not apply in connection with the S. P. Co., Pacific System, to points in southern California south of Stockton, Lathrop, Tracy and San Jose, on shipments routed via Portland or East Portland, Oregon." And still another (exception 2): "The rate provided herein from points east of Chicago, Ill., or south or east of St. Louis, Missouri, will not apply to points in California by Northern Pacific Railroad by Portland, Oregon, in connection with the Southern Pacific." Rates provided herein will not apply to Portland. At the foot of Exhibit 81-D, page 873, there is a statement on page 3 of Amendment 1 of I. C. C. No. 1, effective June 24, 1897, which reads as follows: "Except as hereinafter provided, the authorized rates to California points will apply (to San Francisco only) from territories," which are then specified.

(3382) Exhibit 183 embraces only class rates. There are also many commodity rates from Portland to San Francisco. As a general rule, more tonnage moves under commodity than under class rates. Witness differentiates between rates between a point and rates from and to points. "Between" applies both ways; "from and to" applies one way. (3383) Exhibit 183-B was in effect only fifteen days. Witness doesn't know how long the one that superseded it was in effect. The Commission has no record of its ever being canceled. It may be in effect yet, as far as witness knows. (3386) Referring to Exhibit 196, the Santa Fe canceled the joint tariffs between the Phoenix & Eastern, and it is referred to in Exhibit 195. Witness didn't look to see whether or not the P. & E. made a through tariff with the S. P., reaching smelters on the latter, at the time the joint tariff with the Santa Fe was canceled, but thought prior to that time no through rate with the S. P. had been made.

Application of various rates.

(3387) Witness wished to amend his testimony to the effect that S. P. I. C. C. 1184 applied by all western lines, by saying that

neither the G. N. nor the N. P. were parties to it, and therefore it does not apply over those routes. (3388) That is, it applies over the S. P. and D. & R. G., and over the U. P. in connection with the O. S. L. and O. R. & N.

Application of various rates.

This Transcontinental tariff witness is testifying about is Transcontinental Freight Bureau I. C. C. 375. "Q. I will ask you to read into the record the statement on this tariff under the head of 'Application of rates to San Francisco via California, via Canadian Pacific Railway, Great Northern Railway, Northern Pacific Railway, and Oregon Railroad & Navigation Company in connection with steamer lines.' A. On page 2 of Transcontinental Freight Bureau, I. C. C. 375, I find the following: 'Application of rates via Northern Pacific Railway, via Portland, Oregon, and Southern Pacific Company (Shasta route). The class and commodity rates named herein, from Chicago and common points north of the Terre Haute & Indianapolis Railroad, Mississippi River and Missouri River common points, north of the Missouri River, including St. Louis and Kansas City, will apply via the Northern Pacific Railway via Portland in connection with Southern Pacific Company (Shasta Route) to points on Southern Pacific Company's lines north of and including Lathrop, Stockton, San Jose, and Tracy, California.' Q. Now, read this one. [Indicating.] A. 'Application of rates to San Francisco, California, via Canadian Pacific Railway, Great Northern Railway, Northern Pacific Railway and Oregon Railroad & Navigation Company in connection with steamer lines. Except as hereinafter provided, the authorized rates to California points, as carried on pages 42 to 105, inclusive, will apply (to San Francisco only) from territories Nos. 1 to 6, inclusive, defined on pages 3 to 11, inclusive, via the Minneapolis, St. Paul & Sault Ste. Marie Railway and Canadian Pacific Railway to Vancouver, B. C., care of Pacific Coast Steamship Company; via the Great Northern Railway, Seattle, Washington, care of Pacific Coast Steamship Company; via Great Northern Railway, Spokane, Washington, Oregon Railroad & Navigation Company, by Portland, Oregon, and steamer; by the Northern Pacific Railway, Tacoma, Washington, care of Pacific Coast Steamship Company; by Northern Pacific Railway, Wallula Junction, Washington, Oregon Railroad & Navigation Company, Portland, Orgeon, and steamer.' Shall I read the exceptions? Q. Yes.

"A. Exception No. 1: 'Rates as above provided will not apply by the Great Northern Railway or Northern Pacific Railway from points in the Missouri River or Mississippi River territories south of the line of the Chicago & Alton Railway, Kansas City to Clark, Missouri, and Wabash Railroad, Clark, Missouri, to St. Louis, Missouri.' (3389) Exception No. 2: 'Rates as authorized herein will not apply on locomotives, cars, extra heavy machinery or other unwieldy or bulky articles, freight in bulk, explosives, combustible freight, or any freight which the law prohibits passenger steamers carrying.' Q. Now, what are the territories embraced in Nos. 1 to 6? MR. LOVETT. What is the number of the tariff he has been reading

from? MR. SEVERANCE. What is the number of that tariff you are reading from? WITNESS. That is Transcontinental Freight Bureau No. 375, I-G. Q. What are those territories that are included in Nos. 1 to 6, mentioned in that statement? A. Territory No. 1, Missouri River common points territory. Territory No. 2, Mississippi River common points territory. Territory No. 3, Chicago and common points territory. Territory No. 4, Cincinnati, Detroit and common points territory. Territory No. 5, Pittsburg, Buffalo and common points territory. Territory No. 6, New York, Boston and common points territory.

Application of various rates.

"Q. What are the rates mentioned on pages 42 to 105? Is that the whole schedule of rates—California terminals? A. They are what are called the terminal rates. It does not include the intermediate rates. Q. I mean the rates to Califoria terminal points. A. Yes, sir. Q. All the rates, page 42 to 105, are the ones mentioned in that note? A. Not all the rates; no, sir. Q. What are the exceptions—in general, say? A. There are some rates on pages 106 and 107 that apply from additional points, designated in groups A, B, C, and D. On pages 110 and 111 are rates from New York, Morgan Line pier and the Mallory Line pier via—that would be the Gulf routes." The all-rail rates to California terminals, or all-rail together with steamer from Puget Sound or Portland, are shown on those pages 42 to 105—practically all the rates there are, are shown there. "There are some special commodity rates in back here that would apply." That is substantially all the class and commodity rates. That tariff was effective January 18, 1904, and remained in effect up to January 1, 1909. (3390) Witness understands the phrase "To San Francisco only," which occurs in some of the provisions of the tariff that he has just read, to limit that tariff to San Francisco only so far as all transcontinental business to or from California points, passing through Puget Sound ports, or through Portland, and thence by water, is concerned. He did not mean to include transcontinental business handled by the N. P. in connection with the Shasta Route.

COMPLAINANT'S EXHIBITS.

Ownership of stock by defendants.

(3391-3396) Complainant's Exhibit 200. Stipulation setting forth the ownership of stock in the U. P., S. P. and Santa Fe by the individual defendants, and the firm of Kuhn, Loeb and Company. (3396) Stipulation as to the ownership of stock by H. C. Frick in U. P. and S. P. (3397-3403) Complainant's Exhibit 201—being memoranda prepared by J. C. Stubbs, "showing method used to divide (distribute) transcontinental freight rates, namely: arbitrary allowances for river and bay transfer, and the distribution of the remainder by percentages—illustrated by application to a rate of $1.00 per 100 pounds—from each of several important shipping points (which are representative points for a group) to San Francisco."

Distribution of transcontinental freight rates.

Stipulation as to testimony of R. P. Schwerin.

(3403) "MR. SEVERANCE. It is stipulated that R. P. Schwerin, whose testimony given before the Interstate Commerce Commission under date of January 29, 1907, has been, by consent, incorporated in the testimony in this case, has been obliged to leave New York, and so cannot be produced as a witness at this hearing, would, if present, testify as follows: 'Since the date of my testimony before the Interstate Commerce Commission under date of January 29, 1907, there has been no change whatever in the operation of the steamers between San Francisco and the Isthmus of Panama. On the line between San Francisco and Portland, the service has been changed from a five days' to a seven days' service, but the aggregate tonnage of the two steamers on the seven day service is greater than the two steamers previously operated under the five days' service. That as between San Francisco and the Orient there has been no change in the operation of the steamers of the Pacific Mail Steamship Company or the Japanese line, except that the Japanese line has replaced two of its smaller boats with newer and larger ones. That the Occidental & Oriental Steamship Company is being liquidated, and the one steamer which was chartered and operated by said Occidental & Oriental Steamship Company, in 1907, between San Francisco and the Orient, is now operated on the same route, on behalf of its owners, with the Pacific Mail Steamship Company as agents. There has been no change in the routing of the homeward business as between connecting rail lines at San Francisco.

Changes in steamship service.

New ships for San Francisco-Portland line.

"MR. LOVETT. It is stipulated that in April, 1909, contracts were made by the Union Pacific Railroad Company with the Newport News Shipbuilding & Dry Dock Company for the construction of two first class passenger and freight ships, of about 3,800 tons each, for operation between San Francisco and Portland by the San Francisco & Portland Steamship Company, either through ownership or under charter, such ships to be delivered in January, 1910. MR. LOVETT. It is stipulated that the testimony of Alex. Millar, as contained in the printed record of the testimony, at page 232, to the effect that the Southern Pacific Company owned a portion of the stock of the Occidental & Oriental Steamship Company, is inaccurate, but the exact relations of the ownership of that stock to the Southern Pacific Company may be covered hereafter by further stipulation or by testimony. MR. LOVETT. It is stipulated that there shall be substituted for the testimony of Alex. Millar, at page 232 of the printed record of the (3404) testimony, to the effect that the steamers 'Aragonia' and 'Numentia' were owned by the Union Pacific Railroad Company, the statement that they were, at the time mentioned in his testimony, chartered and operated by the Portland & Asiatic Steamship Company. MR. LOVETT. It is further stipulated that William Mahl, comptroller of the Union Pacific Railroad Company and Oregon Short Line Railroad Company, if called as a witness, would testify that the Union Pacific Railroad Company and Oregon Short Line Railroad Company have disposed of all of the

Millar's testimony as to "Argonia" and "Numentia."

Sale of Northern Pacific and Great Northern stock by U. P. and O. S. L.

stock of the Northern Pacific Railway Company and Great Northern Railway Company formerly owned by them, and at this time neither the Union Pacific Railroad Company nor the Oregon Short Line Railroad Company owns, directly or indirectly, any stock of either the Great Northern Railway Company or the Northern Pacific Railway Company; and it is further stipulated that said Mahl would also testify that neither the Southern Pacific Company nor the Oregon Railroad & Navigation Company has ever owned, directly or indirectly, any stock of the Northern Pacific Railway Company or of the Great Northern Railway Company. MR. LOVETT. It is further stipulated that R. S. Lovett was elected a director and a member of the executive committee of the San Pedro, Los Angeles & Salt Lake Railroad Company to succeed William D. Cornish, deceased, and that the said R. S. Lovett still occupies such offices. * * * MR. LOVETT. It is stipulated that the Empire Construction Company, the Los Angeles Terminal Land Company, and the California Improvement Company have been wound up and dissolved. MR. LOVETT. It is stipulated that the fast train service for citrus fruit from Los Angeles to Chicago, referred to in the testimony of J. Ross Clark and R. E. Wells, taken before the Interstate Commerce Commission in 1907 and read into the record in this case, has never been resumed.

R. S. Lovett succeeded Cornish as director of San Pedro.

San Pedro auxiliary companies dissolved.

Citrus fruit service not resumed.

"There is no Complainant's Exhibit 202."

(3405-3416) It is stipulated that the original of the articles of incorporation of the San Pedro, Los Angeles and Salt Lake R. R. Co. was filed with the Secretary of State of Utah, March 28th, 1901; with the recorder of Lincoln County, Nevada, April 8th, 1901; with the Secretary of the Interior, April 30th, 1901, and approved by the Department of the Interior on June 4th, 1901; also that it was filed in California and in various counties in said state at the dates stated in the answer of said company. Complainant's Exhibit 203. Articles of incorporation of San Pedro, Los Angeles and Salt Lake R. R. Co.

Filing of articles of incorporation of San Pedro.

(3417-3423) Complainant's Exhibit 204. Contract between San Pedro, Los Angeles and Salt Lake R. R. Co., and the Pacific Fruit Express Company. (3423-3433) Complainant's Exhibit 205. Articles of association of Union Pacific R. R. Co., with amendments. (3433-3438) Complainant's Exhibit 206. Articles of incorporation of the Oregon Short Line R. R. Co., with the only amendment thereto. (3439-3462) Complainant's Exhibit 207. Articles of incorporation of the Oregon Railroad and Navigation Co., with amendments. (3462-3465) Complainant's Exhibit 208. An act of the General Assembly of the State of Kentucky, incorporating the Southern Pacific Co. with the only amendment thereto.

Articles of association of various companies.

(3466) It is stipulated that J. H. Manderfield, district freight agent of the San Pedro, would, if sworn as a witness, testify that the statements contained in his letters of March 10 and March 15, 1909, addressed to S. H. Babcock, Commissioner of Traffic, introduced in evidence with the testimony of said Babcock at page 2396,

Statements and divisions prepared by William Sproule.

are true. Counsel for the defendants states that he is unable to produce statements showing the divisions and instructions to agents, prepared by William Sproule, freight traffic manager of the S. P. at San Francisco, testified to by the witness Tool (?). Complainant's Exhibit 209, copy of statement showing special rates on salt and sugar between San Francisco and Portland, between August 1, 1895, and May 11, 1904, as shown by S. P.'s tariff on file with I. C. C.

Apportionment of expenses.

It is stipulated that the Chicago office expenses of J. C. Stubbs are apportioned between the U. P. and S. P., of which he is the Traffic Director, on (3467) the basis of interline traffic earnings available for the last twelve months, i. e., the May expenses are apportioned on the basis of earnings for twelve months ending March 31st; that J. Kruttschnitt's office expenses are apportioned among the lines of which he is Director of Maintenance and Operation, on the basis of revenue train mileage for the current month; that the Texas lines operated by companies whose stock is owned by S. P. do not pay any portion of the office expenses of either the said Stubbs or Kruttschnitt, but that the S. P. (Pacific System) as between the S. P.'s and U. P.'s lines pays the proportion that on the basis above stated would be chargeable against the Texas lines.

Complainant rests.

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DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR DEFENDANTS.

VOLUME VIII.

CHICAGO, WEDNESDAY, JULY 14, 1909.

Defendants begin the introduction of their testimony.

Defendants' Exhibits 1 to 8, inclusive, consist of correspondence between R. S. Lovett and Kellogg & Severance, in regard to statistics to be prepared by the General Auditor of Union Pacific and Southern Pacific Systems. They were introduced in evidence in connection with the testimony of C. S. Stebbins, on pages 1873 to 1885, inclusive, Volume 4. There is no defendant's exhibit number 9.

(3469-3511) Defendants' Exhibit 10, being bill of complaint filed in Circuit Court of the United States, for the Eighth Judicial District of Nebraska in the case of Oliver Ames, Second, and Samuel Carr, Executors, of the Last Will and Testament of Frederick L. Ames, deceased, and Peter B. Wycoff and Edwin F. Atkins, Complainants, v. The Union Pacific Railway Company, and others.

(3511-3512) Defendants' Exhibit 11, being answer of Union Pacific Railway Company to bill of complaint, Defendants' Exhibit 10. Answer dated October 9, 1893. (3513-3516) Defendants' Exhibit 12, being order dated October 13, 1893, appointing receivers, in same suit. (3517-3546) Defendants' Exhibit 13, being Decree of Foreclosure in same suit. (3547) Defendants' Exhibit 14, being order confirming sale in same suit.

(3548-3551) Defendants' Exhibit 15, being the assignment, dated Jan. 17, 1898, by Louis Fitzgerald and Alvin W. Krech of their bid to the Union Pacific Railroad Company. (3551-3568) Defendants' Exhibit 16-A, being deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, date January 22, 1898, made pursuant to the decree of foreclosure, Defendants' Exhibit 13.

(3568-3574) Defendants' Exhibit 16-B, being third report of sale made by the Special Master in the foreclosure suit of the United

States against the Union Pacific Main Line in the Circuit Court of the United States for the Districts of Nebraska, Colorado, Wyoming, Utah and the Southern District of Iowa, dated January 27, 1898, together with exhibits A, B, C, D, and E, thereto. (3575) Defendants' Exhibit 16-C, being decree, dated January 31, 1898, of the Circuit Court of the United States for the Districts of Nebraska, Colorado, Wyoming, Utah, and the Southern District of Iowa, confirming the Special Master's Third Report of Sale, Defendants' Exhibit 16-B. (3576-3602) Defendants' Exhibit 17, being copy of decree of foreclosure rendered in the Circuit Court of the United States in and for the District of Nebraska, dated July 29, 1897, in the suit last mentioned. It is stipulated that similar decrees were rendered in the same suit by the Circuit Courts of the U. S. for the Districts of Colorado, Wyoming and Utah and the Southern District of Iowa. (3603-3604) Defendants' Exhibit 18, being order, dated November 6, 1897, confirming Special Master's first report of sale to Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees of property sold pursuant to decree of foreclosure, Defendants' Exhibit 17. (3604-3607) Defendants' Exhibit 19, being an assignment by Louis Fitzgerald and Alvin W. Krech of their bid under the decrees of foreclosure in favor of the United States, above set forth, except the bonds in the United States-Union Pacific Sinking Fund, bought by them at such foreclosure sale. (3608-3623) Defendants' Exhibit 20, being deed from William D. Cornish, Special Master and others, to the Union Pacific Railroad Company, dated January 22, 1898, conveying all the property bought by Louis Fitzgerald and Alvin W. Krech, Purchasing Trustees, at the sale above mentioned under the decree in favor of the United States, except the bonds in the United States-Union Pacific Sinking Fund. (3624-3637) Defendants' Exhibit 21, being decree of the Circuit Court for the District of Kansas, dated July 30, 1897, foreclosing a lien in favor of the United States against that portion of the Kansas Pacific Railroad therein described. It is stipulated that an ancillary decree of foreclosure substantially in the form of Defendants' Exhibit 21 was duly filed and rendered in the U. S. Circuit Court for the Western District of Missouri.

(3637-3638) Defendants' Exhibit 22, being decree, dated February 17, 1897, of the Circuit Court of the United States for the District of Kansas confirming sale by Special Master to Winslow S. Pierce and Alvin W. Krech, under decree of foreclosure, Exhibit 21. (3638-3641) Defendants' Exhibit 23, being the second report of sale, dated May 12, 1898, made by the Special Master in the foreclosure suit, together with Exhibits A and B thereto. (3642-3644) Defendants' Exhibit 24, being order, dated May 13, 1898, confirming second report of sale made by the Special Master in the suit last mentioned. (3644-3647) Defendants' Exhibit 25, being assignment, dated April 8, 1898, by Winslow S. Pierce and Alvin W. Krech of their bid at the last mentioned sale to the Union Pacific Railroad

Company. (3647-3656) Defendants' Exhibit 26, being deed from William D. Cornish, Special Master, and others to Union Pacific Railroad Company, dated April 19, 1898, conveying property sold under the decrees of foreclosure in favor of the United States, Defendants' Exhibit 21 and similar ancillary decree.

It is stipulated that the mortgages referred to in Defendants' Exhibit 21 were foreclosed, the property covered thereby sold on February 17, 1898, to Krech and Pierce and subsequently conveyed to the U. P.

(3657-3692) Defendants' Exhibit 27, being decree of foreclosure rendered on the 30th day of July, 1897, by the Circuit Court of the United States for the District of Kansas in the case of Russell Sage, et al., v. The Union Pacific Railway Company, et al. Stipulation as to substantially similar ancillary decrees in other jurisdictions. (3692-3693) Defendants' Exhibit 28, being order confirming sale to Alvin W. Krech and Lawrence Greer, of property foreclosed pursuant to Defendants' Exhibit 27 and other similar decrees. (3693-3696) Defendants' Exhibit 29, being assignment by Krech and Greer of their bid to the Union Pacific Railroad Company, dated March 21, 1898. (3697-3720) Defendants' Exhibit 30, being deed from William D. Cornish, Special Master, and others, to the Union Pacific Railroad Company, dated March 22, 1898, conveying the railroad property, with its appurtenances so purchased by said Krech and Greer.

(3721-3745) Defendants' Exhibit 31, being decree of foreclosure rendered in the case of Russell Sage and George J. Gould, as Trustees, v. The Union Pacific Railway Company, et al., for foreclosure of Denver Pacific Railway & Telegraph Company's First Mortgage. Stipulation as to similar ancillary decree in another jurisdiction. (3745-3746) Defendants' Exhibit 32, being order, dated March 14, 1898, confirming sale to Alvin W. Krech and Lawrence Greer of property foreclosed pursuant to Exhibit 31 and similar ancillary decree. (3746-3749) Defendants' Exhibit 33, being assignment dated March 21, 1898, by Alvin W. Krech and Lawrence Greer of their bid for property sold to them under decrees in suit last mentioned. (3749-3776) Defendants' Exhibit 34, being deed from William D. Cornish, Special Master, and others, to Union Pacific Railroad Company, dated March 22, 1898, conveying the property sold under the Denver Pacific Railway & Telegraph Company mortgage.

(3777-3792) Defendants' Exhibit 35 being Articles of Consolidation and Agreement between The Oregon Short Line Railway Company, The Utah & Northern Railway Company, The Utah Central Railway Company, The Salt Lake & Western Railway Company, The Utah & Nevada Railway Company, The Ogden & Syracuse Railway Company, The Idaho Central Railway Company, and the Nevada Pacific Railway Company, dated July 27, 1889, and filed in the office of the Secretary of State of the State of Utah, August 1, 1889.

Stipulation as to sale under foreclosure of the railroads of the O. S. L. and U. & N. Ry. Co. (the consolidated company described in Defendants' Exhibit 35) and subsequent conveyance to the O. S. L. R. R. Co., March 16, 1897.

Stipulation as to sale under foreclosure of railroad of Oregon Ry. & Nav. Co. and subsequent conveyance to The Oregon R. R. & Nav. Co., August 17, 1896.

(3793-3804) Defendants' Exhibit 36, being agreement, dated February 1, 1899, between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Co.

(3805-3829) Defendants' Exhibit 37, being first, a notice, dated February 20, 1899, to the holders of bonds and shares of Central Pacific Railroad Company; second, plan of readjustment, dated February 8, 1899; and third, readjustment agreement, dated February 8, 1899. (3829-3834) Defendants' Exhibit 38, being Articles of Association of Central Pacific Railway Company, dated July 26, 1899.

(3834-3839) Defendants' Exhibit 39, being Agreement, dated July 29, 1899, between the Central Pacific Railroad Company and the Central Pacific Railway Company. (3839-3851) Defendants' Exhibit 40, being agreements of lease between the Central Pacific Railroad Company and the Southern Pacific Company.

(3852-3854) Defendants' Exhibit 41, being indenture made August 1, 1899, between Southern Pacific Company and Central Trust Company of New York, subordinating lease to lien of Central Pacific Railway Company's first refunding mortgage. (3855-3857) Defendants' Exhibit 42, being indenture made August 1, 1899, between Southern Pacific Company and United States Trust Company, subordinating lease to lien of Central Pacific Railway Company's three and one-half per cent mortgage.

(3858-3877) Defendants' Exhibit 43, being collateral trust mortgage of the Southern Pacific Company to the Union Trust Company of New York, trustee, dated August 1, 1899. (3877-3882) Defendants' Exhibit 44, being copy of supplemental mortgage, dated December 29, 1899, from Southern Pacific Company to Union Trust Company of New York, trustee.

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DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR DEFENDANTS.

VOLUME IX.

NEW YORK CITY, FEBRUARY 15, 1910.

(3890) J. C. STUBBS (3).

Stubbs.

Witness is Director of Traffic for the U. P. and S. P. Systems, Vice-President of S. P., U. P. and O. S. L.; in railroad service since early part of 1869. After some previous experience in United States Military Railroads, he first entered civil railroad service as foreign voucher clerk at Columbus, Ohio, with the Pittsburgh, Cincinnati & St. Louis. In September, went to California as Chief Clerk of General Freight Agent of Central Pacific Railroad and in latter part of 1871, or early part of 1872, was appointed Assistant General Freight Agent, there being no principal, and performed the duties of General Freight Agent from that time on, being made General Freight Agent a year or two later. In 1882 or 1883 was made Freight Traffic Manager of the Central Pacific Railroad, then the lessor of the S. P. Railroad. About 1885 was made General Traffic Manager, this covering passenger as well as freight traffic, and later was made Vice-President. In 1901 was called to Chicago as Director of Traffic of the U. P. and S. P., and has been such ever since.

His railroad experience.

The U. P. and Central Pacific were first connected in joint business in May, 1869, forming the first through line of railroad between the Missouri River and the Pacific Ocean. The S. P. which had been completed to Deming, New Mexico, and the Santa Fe, which had been completed westwardly to the same place, joined at Deming in 1881. (3891) The S. P. was completed into El Paso, and the Galveston, Harrisburg & San Antonio Railroad was completed easterly from El Paso and was joined at Sierra Blanca, about 90 miles east of El Paso, by the Texas & Pacific, which then took trackage rights from Sierra Blanca to El Paso over the G. H. & S. A., in the latter part of 1881, thus giving the T. & P.

Completion of transcontinental lines.

a line, by joint use, from Sierra Blanca into El Paso. At that time there was not a through line from New Orleans. But later on the G. H. & S. A. was extended farther East, and at the same time was built west from San Antonio, joining in the latter part of 1882, or very soon after January 1st, 1883, at Devil's River. This made the through line to New Orleans. The G. H. & S. A. connected at Houston with the Texas & New Orleans road, which ran to the Louisiana-Texas line, connecting with the Louisiana Western which ran to a connection of the Morgan's Louisiana & Texas Railroad at what was then known as Vermillionville, but now as Lafayette—making the through line to New Orleans.

Later on, in the summer of 1883, the Rio Grande Western was completed to Ogden, Utah, to a connection there with the Central Pacific, and that, with the Rio Grande Western, the Denver & Rio Grande, and the several lines reaching eastwardly from Denver or westwardly to Denver made another through line.

Construction of California lines.

The S. P. of California, as it was then known, built from Mojave, California, to Needles on the Colorado River. Some time in 1883 it was connected there with the Atlantic & Pacific, built westwardly from Albuquerque. In 1884, possibly in the early part of 1885, this Needles branch was leased to the Santa Fe. (3892) In 1885 the Santa Fe, or people representing those interests, acquired the Southern California, or California Southern, as it was called—one time by one name, and again by another—which was built from Barstow to San Bernardino. This gave the Santa Fe and Atlantic & Pacific, by use of the Needles line to Barstow, a through line to San Bernardino. The Santa Fe then contracted with the S. P. for trackage rights from San Bernardino into Los Angeles, later on building from San Bernardino into Los Angeles—thus giving them a through line from the Missouri River into Los Angeles.

Santa Fe through lines to Los Angeles.

Santa Fe through line to San Francisco.

Before the completion of the San Joaquin Valley Road the Santa Fe by traffic contract for the interchange of business made a through line to San Francisco with the S. P. from Mojave by the use of the S. P. rails from Mojave to San Francisco—that is my recollection. I think the contract gave the Santa Fe rights alternately to take trackage rights over the line from Mojave into San Francisco upon certain notice, but they never exercised that option. In 1898, I think, the San Joaquin Valley road was constructed by private parties from Stockton to Bakersfield and about the time of its completion, or possibly before, it was purchased by the Santa Fe interests. Very soon after, the Santa Fe contracted with the S. P. for the joint use of its line from Mojave to Bakersfield, and this gave the Santa Fe a through line under their own management to Stockton, and later on they completed their line from Stockton to San Francisco Bay—practically San Francisco—so that in 1900, the Santa Fe had its own independent line to San Francisco Bay and also to Los Angeles and Santa Monica.

The O. S. L. and O. R. & N. were connected at Huntington in 1884 as a through line. The N. P. was completed to Tacoma in 1883, and to Portland, Oregon, about the same time. (3893) The G. N. was completed to Seattle in 1892 or 1893. In 1902, the El Paso & Northeastern—the corporate title under which that road was built—was connected with the Rock Island, making another independent line into El Paso. The C. P. was completed to Vancouver in 1887. The St. Paul was completed in 1909, and the Western Pacific quite recently.

Completion of O. S. L., O. R. & N., N. P. and G. N.

Before the opening of the U. P.-S. P. all-rail route, transportation between the East and California was by steamship and rail over the Panama Route; steamships to Colon on the Atlantic side, the Panama Railroad across the Isthmus to tthe Pacific side, and then steamships into San Francisco; also by Clipper ships around Cape Horn. The result was that the Pacific Coast trade was almost wholly with the Atlantic Coast cities, the credits and connections of the Pacific Coast jobbers were made with the jobbers of Atlantic Coast cities. The fact that there was quite a wide difference between the cost of transportation—rates and other considerations—via the Isthmus and via Cape Horn, led the merchants to divide their traffic. They would ship somewhat of every kind of goods needed to complete stocks, all of their high class, very valuable merchandise, against which interest and insurance ran heavily, by steamers which ran twice a month.

Route before opening of U. P.-S. P., all-rail.

This service was objectionable on account of the transfer on the Atlantic side from ship to car, and on the Pacific side from car to lighter, and lighter again to ship. But the major portion of the tonnage, especially heavier commodities, staple goods, went by all-sea route via Cape Horn. In that day everybody that brought goods in by sea, even from a domestic port, was called an importer. The result was that the importers had to carry very large stocks, practically a six months' stock on the sea and a six months' stock in store, depending upon the Panama service to make good any deficiencies in their orders. The Panama service averaged about 45 days for freight and 26 days for passenger service. (3894) The Clipper ship service via Cape Horn ranged from 90 days—(made once I believe by the Young America) to 180 days, the average being about 120 days. Goods moved in large quantities because, as I recall, the ship sailed regularly, only about one every two months.

Panama service objectionable.

I was not on the Pacific Coast when the railroad was opened, did not get there until 1870, but became familiar with what had been done after I got there. The first tariff, as I remember, from New York to San Francisco, was on the scale of $8.00 for first class, reduced in 1870 to $6.00 per cwt. first class. The railroads got very little business. The merchants were wedded to their connections, customs and traditions, and the adjustment of their business to the use of the sea. The jobbers thought that the longer routes gave them considerable advantage because it took a good

First tariff, all rail route.

deal of capital to carry the large stocks made necessary by the use of the sea routes; so when the railroad was opened, the first proposition they had to face was that anybody that would ship a carload could get the lowest rate at the time. The result was that they were not very friendly to the all-rail line and they got very little business. If we reduced our rates, reductions were made by the sea; and it was finally decided that by an open tariff at that time we could make no headway in developing the traffic by rail. Out of that condition, what is popularly known on the Pacific Coast as the "contract plan," was evolved.

Merchants not friendly to all-rail line.

Merchants had been dividing their business, as I have said. They would ship a certain portion via Panama, and a much larger part by clipper ship; and they shipped more or less by rail, after the road was opened. But the cost of transportation to the merchant differed according to the route that he used; and knowing that he would assort his business; he would use the railroad only as a matter of convenience, and use the Panama very much in the same way, except that the Panama route took a larger share than the railroads did. But most of his goods went by sea. We proposed to the merchants that if we could have a guarantee of all their business for one year, we thought we could afford to make a rate that would make it profitable to them to use the all-rail route. This proposition was taken up, one by one, with the principal jobbers; sat down with them, examined their bills of lading, their insurance policies, their invoices, so as to actually determine the cost, all things considered, of the use of the three routes and the volume of tonnage that they sent over these three routes. (3895) And upon the results of that examination we based an offer to them of an all-rail rate that we would guarantee for one year. I think that explains it in a general way. One by one the principal jobbers fell into that; at San Francisco and at Sacramento, and I think all the principal importers of Portland—two or three did, I know. Before we got through with it we practically had all the importers under contract, except one firm in San Francisco which never came in. These contracts were individual. They showed different rates on the same article, for the same service, for different merchants; because we found the widest sort of discrepancy by the ships, and we had to deal with each merchant by himself considered. But after we had operated for possibly a year, and got the majority, if not nearly all, of the merchants under contract, we then took up these contract rates and harmonized them, and made a common list, and published that common list of rates; and thereafter that common list of rates was applied to everybody—large or small shipper—who would undertake to enter into a contract to ship exclusively by rail for one year, and it was published. At the same time there was another general tariff very much higher—in fact the regular tariff that was in existence before we began this contract plan, which was applied to the shipments of merchants or anybody

Contract rates.

that was not under contract. My recollection is that this contract plan began in 1878.

On account of the total destruction of all our records in the San Francisco fire of 1906, I haven't any means of determining just what the date was, and the U. P. records unfortunately have been destroyed too. I think it ran until after 1883, more or less. Of course this was initiated over the U. P. and Central Pacific—the original line. As the Santa Fe line, and the T. & P. line, and the Rio Grande line, were respectively opened up, they adopted the contract plan. But when these lines multiplied, it became burdensome; we couldn't handle it very well; and it became obnoxious to the shippers, because the only way it could be handled was to bill the goods at the general tariff and refund by voucher the difference between the general tariff and the contract tariff. So along about 1883, possibly 1884, it was abandoned. But this list of contract rates, which I have described to you, became the basis for the open rates. I might say it was practically adopted, although there may have been eliminated some of the very low rates that were taken under contract, because of the compensation derived from the higher class of goods which the same merchant would ship.

Contract rates abandoned.

(3896) I might add that what I have explained was not the whole and sole influence in requiring the abandonment of this contract plan. In the meantime the rapid growth of manufacturing industries west of the Allegheny Mountains, the opportunity afforded by the all-rail lines for the Pacific Coast merchants to make connections in that territory, very much increased the proportion of the tonnage, or shifted a large share of the tonnage that originally was produced on and shipped from Atlantic Coast cities to the more westerly points. I might illustrate by saying I think I can recall that, at the outset, all the stoves that went to San Francisco went from Troy, N. Y.; and it was not long after the opening of these roads until they began to ship from the west, until now they mostly go from St. Louis. And the same thing is true of boots and shoes, and very many things. That reduced the force of sea competition on a very large proportion of the traffic that was shipped to the Coast, where formerly the sea competition was absolutely controllable. Of course the further west we got from the Atlantic seaboard, the less forceful, although it was influential in determining the rate—the less forceful the sea competition was.

New trade centers in middle west.

The so-called Sunset Route was opened in the early part of 1883, I think in February. The "Sunset Route" is the term applied to what we call the S. P.'s line made from New York to San Francisco. Originally it was made by the use of the Morgan Steamship line of vessels from New York to New Orleans; Morgan's railroad to Lafayette; and, as I have described it, the Louisiana Western, the T. & N. O., and G. H. & S. A. and the S. P. That was called the "Sunset Route"—an advertising feature. Those lines were connected up, I think, at Del Rio, in the

Sunset route opened—defined.

latter part of 1882, and the roads were ready for operation very soon after the first day of January, and the arrangements were completed for the through service, and I think the line opened in February.

Reasons for its initial success.

The time for opening the Sunset Route was very propitious. I think it owes its initial success to the conditions that existed at the time. Under this contract plan that I have described, all the business was overcharged; not only that, but the lines east of Chicago, particularly, and in some measure, east of the Missouri River, look with some—not disfavor, but they lacked interest in the California business; it was comparatively small; they subordinated it to their own service; that is, the trunk lines would put it aside in favor of their business, which they considered to be more profitable, for Chicago and the middle west. The Iowa lines, as we called them, were not so bad, but they did much the same thing.

All-rail service bad.

(3807) So the service was very bad. The movement ranged from 30 to 45 days. On much of the freight we didn't do as well as the Panama Steamship Line did. And, as I stated, it was all overcharged, and the people were very much exasperated. They had gotten sort of used to the contract plan, and had found holes in it, and were ready to smash it; but they were aided in that desire and purpose by the bad service that was being performed by the all-rail routes. When the Sunset Route was opened, no one had very much fear of a part water and a part rail line. And it was opened at lower rates than the all-rail rates. The all-rail lines did not pay any attention to it, but when the arrangements were completed for the opening of that line, the S. P. officer went back to San Francisco, he told the merchants there that he had been cussed and blamed for the bad service on the all-rail line, and he denied any responsibility for it, and that he now had a route under one control from New York to San Francisco and he was going to prove to them that what he told them was true; asked them what service would be satisfactory to them, and they told him what they thought, that it was not so much quick time, but they wanted regular time, so that when the goods left New York they would know within a day or two when they would be on their shelves. So the line was opened, and they were fortunate enough to make what was then extraordinary time—short time; to-day it would be called extraordinarily long time—18 days from New York to San Francisco, and 22 or 23 days in the opposite direction. Overcharges were paid promptly, and loss and damage claims were settled immediately; and the merchants were tickled to death. The result was, it was not very long before a very large share of that business was on the Sunset Route.

Regular, rather than quick time, preferred.

The matter of loss and damage claims had been a very great objection so far as the all-rail lines were concerned, and has been always and is so today, nothing irritating merchants so much as delay in the settlement of their claims. The Sunset Route, the rail line west of San Antonio and practically west of Houston, was

Prompt settlement of claims.

new and there was very little business on it, compared with what there is today, and so of the Morgan line from New Orleans west. So the New York business taken for California practically had a free undisturbed movement from New Orleans to San Francisco. The cargo was gathered on the wharf in New York, and the ship arrived in 6 days at New Orleans, as against some times 6 days from New York to Chicago. The ship arrived in the morning, the cargo was on the cars that evening and on its way west, so without any extraordinary speed, the free course, lack of interruption, enabled a 16 days' time without any extraordinary expense. I think those were the conditions that enabled us to perform the service with such facility.

Free, undisturbed movement of through traffic.

(3898) The several links on the line, like the Morgan Railroad & Steamship Line, Louisiana Western at the outset, T. & N. O. G. H. & S. A., and the S. P. west of El Paso, had separate operating offices, and very shortly the entire line east of El Paso was put under one general manager, but the traffic, so far as the through traffic was concerned, was under one officer. And the effect of it was, as far as this through business was concerned, to have practically a solid line from New York to San Francisco; all the parts were cohesive and all the officers of the constituent roads were sympathetic, really inter-dependent in their relation to the common owners; so that, so far as this through business was concerned, these lines were operated as one line just as effectually as the several divisions of the Northwestern, or the Union Pacific, over which a Division Superintendent presides, are operated as a through line. The manifests of ships were sent by rail to San Francisco from New York and would be in San Francisco about the time the ship arrived at New Orleans. This was quite an advantage. The ships landed at Algiers, opposite New Orleans, and the California cargo was loaded so as to go out of the ship first, loaded in cars, always a train-load, sometimes two or three, and the trains at that time were run solid through to San Francisco.

Through traffic placed under one officer.

The paucity of the business on the rail lines made that possible; I mean made it as little expensive to do it in that way as it would be to do it in another way—as to mix the cargo with local freight. As regards the effect of the unity of management on the Sunset as against the diversity of the management on the all-rail service in accomplishing prompt and satisfactory settlement of claims made by shippers, you couldn't safely settle the claim for overcharge, or for loss and damage, by the U. P. and the Iowa Lines and the Trunk Lines, without first tracing for the purpose of locating the responsibility for the loss or for the damage, and getting authority —except for this part of the overcharge created by the difference between the contract rate and the open rate. It took an average time of about six months to get a claim for loss or damage settled; sometimes it was two years. On the Sunset, in contrast with that, it was settled immediately.

Effect of unity of management.

(3899) There was a very considerable share of the New York business that moved out by the Sunset Route, so much so that in the summer of 1883 the Trunk Lines especially awoke to the fact that they had lost considerable business, and the California business began to appear more valuable in their eyes than they had ever pretended that it had been previously; and they protested against the differential rate—the lower rate which was being made by the Sunset Route, and which was founded on the fact that there was insurance for the sea voyage. The result was the adoption by the Sunset Route of the all-rail rate and the issuance by it of an insured bill of lading. But that did not for the time being very much affect the business which had settled on the Sunset Route; the Sunset continued to take quite a considerable portion of that business for some time.

All-rail rate adopted.

It was in 1885 or 1886 that we made the connecting line arrangement, pro-rating arrangement, with the Santa Fe, after they had acquired by a lease and purchase contract the ownership or control of the S. P.'s Needles Branch. Immediately after they had established this through line in connection with the S. P., with the option, never exercised, to take trackage rights, they demanded a share of the through traffic, and wished the other lines that were concerned to guarantee them that amount. Those lines thought their demand too great, and the result was the very severe freight war of 1886, lasting several months.

Cause of rate war of 1886.

"Q. Will you explain to what extent, and how and why it would be the fact, that the lines terminating in California, the Southern Pacific in the first instance, subsequently the Atchison upon its advent into California, came to dominate the trans-continental rate situation on California business? A. From the very beginning of my connection with this business, which was in 1870, by common consent (I don't recall and do not think there was ever any formal agreement either oral or in writing) the handling of that business, suggestion as to rates, nomination of the rates, between Pacific coast points and all eastern territory, was (3900) practically left with the Pacific Lines."

Pacific lines always nominated rates.

As long as the U. P. and S. P. roads constituted the only line west of the Missouri River, these rate conditions were handled jointly by the officers of the U. P. and Central Pacific. After the Santa Fe was completed in 1881, the result was that practically the matter was left in the hands of the Central Pacific people. At that time they had the deciding voice; and in fact that did continue up until this time that I speak of, when the Santa Fe got into San Francisco with its own line, or into Los Angeles with its own line. After that time the Santa Fe had just as much voice in making the rates to and from California, as the S. P. or the Central Pacific; but there has been no time since 1881 when any rate, all-rail, could be made to California without the consent of the Central Pacific, the S. P., or the Santa Fe. I would like to make an explanatory statement. I sometimes use the words "Central Pacific," and some-

After its completion to San Francisco, the Santa Fe had an equal voice in making rates.

times "Southern Pacific." It may confuse you. Up until 1885 the Central Pacific was the lessee of all these lines, and the business was conducted in the name of the Central Pacific. In 1885, after the organization of the S. P. Company, it took all of the lines and the S. P. was the one. It was "Southern Pacific" after 1885, and "Central Pacific" before.

Relations of "Central Pacific" and "Southern Pacific."

The Central Pacific people had the line from Ogden to San Francisco, and from San Francisco to El Paso and New Orleans; the constituent lines had various names, for instance, the S. P. R. R. of California, the S. P. R. R. of New Mexico, the S. P. R. R. of Arizona. These things are a little confusing, but that was the situation. Prior to the advent of the Santa Fe into California, the T. & P. connected with the S. P. line at El Paso, and the D. & R. G. with the Central Pacific at Ogden; they were merely connections; they did not have any lines into California.

The Transcontinental Freight Bureau was a bureau of which all these lines west of the Missouri River were members. It was (3901) adopted for co-operation on questions of classification and various questions that would arise. When it was in session, the rate questions were usually submitted to vote and decided by vote; but, notwithstanding that, even during the sessions of the Transcontinental Freight Bureau, there has never been a time that I know anything about, up to a quite recent time, when any rate measure would pass against the objections of the Santa Fe and the S. P. But if either one of them voted for it, either one of them had the power to make it effective.

Transcontinental freight bureau.

As a matter of fact no through all-rail rate could be made from the Missouri River or east to California without the consent of the S. P. in the first instance, and subsequently, upon its advent, without the consent of the Santa Fe; nor could any all-rail line, as a physical matter, be made into California except over the rails of the S. P. or the Santa Fe, without constructing it. The Santa Fe forms a line under one management from Chicago, and could do as it pleased in the making of an all-rail rate—it didn't have to ask anybody; the S. P. had its own line all the way through to New York and could do as it pleased. The U. P., or the Rio Grande, or the Rock Island, or the T. & P., could not of its own motion or by independent action make such through rates as I have been speaking of here.

Rate-making power of S. P. and Santa Fe.

The U. P., practically speaking, could not make such a through rate by the use of the rail line to Portland and the O. R. & N. steamship lines from Portland to San Francisco—that is, they could not unless they disregarded every consideration of profit or self interest; of course they could make the rate. It was an impracticable route. They could not do it in this sense: that the U. P.'s own separate (3902) and individual interests would restrain it from doing anything of the kind, would render the doing of anything of that kind a costly thing. It would cost more than it would make, in other words. It is one thing to make through rates on paper

The route to San Francisco via Portland, was a paper route only.

and another thing to make practical and operative through rates; and that route for business on and east of the Missouri River, so-called route, rail to Portland and steamer from Portland to San Francisco, "has never been anything but a paper route."

Panama, Cape Horn and Tehuantepec routes.

The Panama Route, the Clipper ships via Cape Horn, and later the Tehuantepec Route, practically controlled the rates to the Coast in the sense that whatever rate was made all-rail must be made with due regard to the cost of the movement via the sea route. The Panama Route had never more than 3 steamers a month, —ordinarily 2 steamers a month each way; the clipper ships sailed every 2 months, sometimes oftener but the undertaking was to have regularly a vessel every 60 days; later on, the American Hawaiian Steamship Company undertook to dispatch one steamer a month via the Straits of Magellan; and the clipper ships around the Horn were superseded by these steamships in 1900 I think. Later on there was the Tehuantepec Route.

The Mexican Railroad across the Isthmus of Tehuantepec was constructed and then the American-Hawaiian Steamship Company contracted with that line to furnish it service, and they abandoned the Magellan Route and now work in connection with the Tehuantepec. I think the Tehuantepec Route had the effect relatively to the Panama Route or the clipper ships of carrying more tonnage. It is pretty difficult to answer that question because the general volume of tonnage has increased so largely and we have not the best evidence as to just what tonnage they are carrying, but my impression is that there is more tonnage relatively moved via the Isthmus of Tehuantepec.

Completion of N. P. and G. N. had no effect on California business.

(3903) The effect of the completion of the N. P. and the G. N., so far as California business was concerned, was not noticeable. The transportation by those companies was particularly to the North Pacific Coast—Portland, Tacoma, Seattle, Spokane. The effect of the Canadian Pacific on the California business was not appreciable. They made a dash at it by undertaking to carry a differential in their rates to San Francisco, 10 per cent. lower than the rates of other lines, and took some business, not a very considerable amount, but were called upon by the other lines to withdraw their differential. The matter was arbitrated, and they withdrew the differential, and since then they have not been a noticeable factor in the business.

As to the U. P., it has had a line of late years from Kansas City through Cheyenne, and from Omaha through Cheyenne, to Ogden, Utah, connecting at Granger with the O. S. L. which it owned. At Ogden it connected with the Central Pacific. The Central Pacific formed its line for California.

Central Pacific formed U. P.'s California line.

As to the territory which the Central Pacific or S. P., as they have been termed here, opened up to the U. P. by that rail connection at Ogden to California: "The Central Pacific runs from Ogden through Sacramento and Stockton to San Francisco and also to San Jose—the original Central Pacific line. At Roseville Junction,

Territory opened up to U. P. by S. P. rail connections.

which is eighteen miles east of Sacramento, there runs north the Central Pacific's California and Oregon line up through the great Sacramento Valley, a very productive valley, on the east side of the Sacramento River. At Sacramento it connects with what was originally known as the California Pacific, a road that serves the southern part of the Sacramento Valley, (3904) reaching the Bay of San Francisco—it is really the Straits of Carquinez at Benicia, and also on the other side of the mountain there at Vallejo, where it connects with the very productive Napa Valley, running up to Calistoga and also across to the Sonoma Valley. The original line from Sacramento continues then down to Stockton, and a few miles west of Stockton, at Lathrop, it connects with the San Joaquin division. That is a line up the San Joaquin River, on the east side, to Goshen, and there connects with the Southern Pacific, which continues on through Bakersfield, over the Tehachapi, to Los Angeles. A few miles beyond Lathrop, on the west side of the San Joaquin River, another line goes up the San Joaquin Valley, serving the west side of the San Joaquin Valley, connecting with the main line which I have described, the southerly line, at Fresno and Tulare."

That is the line that diverges at Tracy. "Then it continues on down and crosses the original Western Pacific, crosses through the Livermore Pass into the Alameda Valley, a very rich valley, where its original San Jose line at Niles deflects and goes south to San Jose, and it also continues into Oakland. At Tracy it also has a line following the river and the Bay of San Francisco into Oakland. In other words, the Central Pacific and its connections opens the entire productive territory of California to any connection that it has at Ogden." Except to the points I shall name, none of this interior country that I have described can be reached by the sea through Portland or Puget Sound or by the other sea routes, without the use of either the Santa Fe rails or the S. P. rails. "The exception points are points that are on the Bay of San Francisco, the City of Stockton, which is on the San Joaquin River, to which there is limited steamer transportation, and the City of Sacramento to which there is steamboat service, and possibly Marysville. I doubt very much whether the Feather River is navigable to Marysville now, but it was at one time. MR. DUNNE. I think not."

Central Pacific only rail connection U. P. had.

The Central Pacific is the only rail connection the Union Pacific had at the time we are talking about—1901. I suppose today it might make a connection with the Western Pacific. In respect to through rates, through billing, through cars, through train service into this California Territory, the Union Pacific was absolutely dependent upon the Central Pacific; its position was that of an intermediate carrier—connection of this line; it seems to me that is obvious. (3905)

Analysis of Portland-San Francisco route.

The U. P.'s "paper route" by way of Portland and the ocean to San Francisco is as follows: "The Union Pacific line from Omaha to Granger, the Oregon Short Line, which is owned by the Union

Pacific, from Granger to Huntington, and then the O. R. & N. railway from Huntington to Portland, and what was, at the time of this so-called merger, the O. R. & N. steamers running between Portland and San Francisco. The service, of course, over the all-rail line was daily. The service between San Francisco and Portland was, I think, a steamer every five days. The distance from Omaha, the eastern terminus of the Union Pacific, is greater to Portland over the line that I have described than the distance from Omaha to San Francisco over the Union Pacific and Central Pacific which I have described. The freight undertaken to be moved via Portland to San Francisco by whatever route it chooses, when it gets to Portland has yet to travel more than one-third of the distance from the starting point to San Francisco via the Union Pacific. It takes more time, under ordinary conditions, that is, equal conditions by both rail lines, to get into Portland than it would to get it to San Francisco. It would have to wait at Portland the arrival of a steamer because the steamer goes only every five days, against a daily service all-rail into San Francisco; subject to the additional transfer, subject to the perils of the sea, which it would not be by the all-rail route; the disabilities of that line as compared with the all-rail being probably represented by five days additional service or additional time employed. I think that is rather less than more than the average additional cost. Additional handling, which while it may be said is entirely at the cost of the carrier, is a thing that the shippers take into account because they would rather have their goods in good condition than to have a claim. And these disabilities are common and well known and are such that no shipper would use that line without some compensation, and there is no way to compensate, that I know anything about, except in the rate, and of course the competitors of the Union Pacific for San Francisco business would not permit it to make a lower rate by that route than they make. In other words, it is practically a no thoroughfare—has been, generally recognized so.

Its disabilities known to shippers.

"Q. Do you carry in your memory, or have you a memorandum of, the year when the Union Pacific operated the Short Line and the O. R. & N. to Portland as part of its system? A. I think in 1888 they thought they had them, but there was some court proceedings which intervened, so that in 1888 the Navigation Company went into the hands of the Receiver. I think it did not get out of the hands of the Receiver, so that the Union Pacific got practical control of it, until along about 1896—it may have been 1898, but in the meantime, during that period, I think it was recognized and treated, so far as its relations to the public were concerned, as a solid line, Union Pacific line from Omaha to Portland."

(3906) Assuming that the U. P. controlled the Short Line and the O. R. & N. as early as 1889, I know—while having no connections with those properties at the time—that the O. R. & N. operated steamers between San Francisco and Portland at that time and has, in fact—either itself or its predecessors—all the time

since I know anything about the business until the present organization was made.

Although my railroad experience began in 1870, I have never known that route by Portland and the ocean to San Francisco to be operated as a through route and worked as a through route. "Perhaps I had better explain. Of course it is pretty well known that I have been practically at the head of the freight department for the Central Pacific interests since, certainly, 1872, and perhaps more intimately associated and connected with the industrial development of California than any other railroad man in the country. In all that time I have never known any business to move or to be worked through the influence or endeavors of the Union Pacific, even of the Union Pacific's own representatives in San Francisco, via the Portland gateway to or from points on or east of the Missouri River. Of course I was alert in watching the interests of the Central Pacific as a connection of the Union Pacific, but it was so manifest to me that the Union Pacific interests lay in connection with those of the Central Pacific that I do not think I ever apprehended any attempt upon their part to use the other lines for San Francisco business. There may have been sporadic cases when business moved that way; there may have been an occasional jag of freight gone that way for some reason or other, but never had I occasion in all this time to enter a protest or to inquire or to say anything about that line to a Union Pacific officer. I was quite certain in my mind that it would not be a profitable venture upon the part of the Union Pacific, and I never had any reason to believe that the Union Pacific officers did not hold the same view."

No San Francisco business moved via Portland route.

Use of Portland-San Francisco route by U. P. would have been against its interests.

The Rio Grande Western road connected with the Central Pacific in 1882 (I think it was) at Ogden. Whereas the U. P. had only the rails of the Central Pacific upon which to move into California, the S. P. had two connection at Ogden—the U. P. and the D. & R. G.—as far back as 1883. If I were to assume hypothetically that the U. P. should really (3907) and substantially have made in the past, the attempt to use the Portland route, why, very naturally the officers of the Central Pacific and the S. P. would have resented it, would rightfully have assumed that the U. P. was undertaking to divert traffic from the Central Pacific, and in every way that they knew how, if they could not prevail upon the U. P. to stop it, they would have endeavored to counter upon the U. P. They would have diverted traffic from the U. P. They were not dependent upon the U. P. The Rio Grande had very powerful connections at Pueblo and Denver, such as the Missouri Pacific, the Rock Island, the C. B. & Q., the Santa Fe, all of whom, so far as Colorado common points were concerned (which would represent one-half of the service of the U. P. to Ogden) were eager for this business and of course would have cooperated in any endeavor to get the larger portion of the business that way. The very large territory, locally, which I have described, productive territory, consuming territory, of California, of course would have been closed to the U. P. road, except

upon what they could have done by solicitation against the active endeavors on the part of the S. P. or the Central Pacific to send it the other way. I don't know whether that makes it very clear to you, but in my own mind I think that statement itself would be sufficient to illustrate to any traffic man that they would have sewed the U. P. up very quickly.

"Q. Now let me see if I get your mind. Do you mean that these conditions would result even though the Southern Pacific did not take out the through route with the Union Pacific, did not close the gateway, did not disturb the status quo at all so far as through arrangements with the Union Pacific were concerned? Was the Southern Pacific sufficiently influential to deflect the business without extinguishing the through arrangement with the Union Pacific? A. No doubt about it. Perhaps I had better tell you a story. * * * After I came to Chicago and was put in charge of the Union Pacific system as well as that of the Southern Pacific, I was in New York and had occasion to call on Mr. Gould, president of the Missouri Pacific, who at that time had acquired the Rio Grande. I had very pleasant relations with him. When I sent in my card he invited me to come into his office at once, and when I got in there I found the traffic officers of the Rio Grande with him. They were discussing how the relations of Mr. Gould to the Rio Grande could be made (lawfully of course) useful to (3908) the Missouri Pacific, and suggestions were made that they could arbitrarily divert the traffic to the Missouri Pacific. They went on discussing it in my hearing as though I were not present. I said, 'Mr. Gould, pardon me, I would not do it that way if I were in your place.' He said, 'How would you do it?' I said, 'I would not say anything about it publicly; I would not make any public demonstration at all; I would just tell these boys that you would like to have that business go as much as possible over the Missouri Pacific line.' He looked at me and said, 'By God, that's what you have been doing to me by Ogden, isn't it?' Now that is all that was done in that way. It only illustrates the value of the sympathy and the cooperation of a connecting line. It can hardly be expressed in language, hardly be made manifest to a layman, one who is not acquainted with the practical operation and close relationship between shippers and carriers. But possibly it would be a sufficient answer to your question to say that I think there would be no doubt to any traffic officer in the room or anywhere, as there is no doubt in my own mind, that under conditions which have been described if the Union Pacific had undertaken to divert traffic for San Francisco and San Francisco Bay, which is the only traffic they could have used the Portland route for, under these peculiarly unfavorable conditions undoubtedly the Southern Pacific Company could have made it so costly to the Union Pacific, and in a lawful way, too, that they would have been sorry that they had any such line as a steamship line from Portland to San Francisco. Now I not only

Power of S. P. to deflect business.

Value of sympathy and cooperation of connecting line

Use of Portland route could have been made costly to the U. P.

think so, but I think the Union Pacific officers thought so—knew so, and that is the reason they didn't try it."

(3909) It did not need any clairvoyance to read the mind of the U. P. officers on the situation I have been describing, not a bit. There was substantial difference in the situation of the U. P. and Can. P. so far as the Can. P. having no available rail connection was concerned—a vital difference. The Can. P. had no other way to get into San Francisco or to California but by the use of the sea route from Vancouver. The U. P. had the very best way that was open to any line to get into San Francisco bay and the city of San Francisco and, in addition, to all the valuable and populous territory, productive territory, that I have described. The N. P. and G. N. have had through rates into San Francisco in connection with the Pacific Coast Steamship Company. Whether they have every worked it or made any earnest endeavor to move business that way, is best shown by the fact that they have never taken enough of the business that way to attract any attention or call for any protest or objection. They have never in any substantial sense done the business, but I am referring now to what we call the movement to or from the Missouri River and east, including St. Paul. By way of matters of fact illustrating as reasons the nonparticipation of these Northern Lines in any substantial sense in this San Francisco or California business—in the first place they have never taken any noticeable tonnage that way. Whether they have worked for it on the idea that they had a practicable route, I can only infer from the fact that they have not taken much business and they knew that as well as anybody else, and they had not made much effort to do it simply because they thought the effort would be unavailing.

Difference in situation of U. P. and Can Pac.

Effect of N. P. and G. N. through rates to San Francisco not noticeable

(3910) There are three ports on the Pacific Coast, each of them served by a strong, independent, well-officered line—Vancouver by the Can. P., Seattle by the G. N. and incidentally by the N. P., and Tacoma by the N. P. If one of these lines operated a steamship line from its port to San Francisco, I assume the others would feel compelled to put on steamship lines from their ports. Manifestly there is not business enough there to support three steamship lines. They could not very well combine or run one steamship line serving all three ports, since they are competitors all fighting for the business and the steamship would have to make all three ports to load cargo. I need not elaborate that—anybody could see that it was almost impracticable. Their takings of business would be limited almost wholly to what business they brought in from the East, and for San Francisco Bay points. The steamship line would depend practically on their transcontinental service for support. I can say from what I know of the business that it would not support even one steamship. In reference to the Sunset Route, part water and part rail, and as to why that route was comparatively successful in contrast with the others via Puget Sound:

Three steamship lines necessary for the northern railroads.

(3911) "It seems to me it is obvious. In the first place, the Sunset Route mixed water and rail line, as has

Sunset under one management.

already been explained, is a solid line, a line that so far as traffic and operating conditions are concerned, as I have explained, is under one management and control. In the second place, the steamship service is the initial service, and the initial point is the City of New York, which, with the communities within lighterage limits, furnishes by far the most productive port, from the point of supply, in the country, if not in the world. The ships moving from New York to New Orleans would draw from this immensely productive market or these productive markets not only traffic for San Francisco and San Francisco Bay points, but a very large tonnage for New Orleans, Louisiana, Texas, even Oklahoma, Mississippi, southern California as well as intermediate points between southern California and San Francisco and all of the interior of California, that I have described. They all contributed to the tonnage that would safely, economically and profitably to the carrier be moved by the steamships from New York to New Orleans. The result was that always three ships a week, according to my recollection, and sometimes four, were dispatched, and there have been seasons when there has been a ship despatched every day, I believe. The ships, as I have explained, were loaded just as a car is loaded for distribution of local freight. The freight that must come out first is the last put in; the freight for California was loaded in last and came out first, and so the opportunity was given for the prompt and expeditious movement over the line. Now it seems to me that that would be obvious to anybody as a distinct and complete answer to any suggestion that because the mixed water and rail line via New Orleans or Galveston was measurably successful, that a mixed water and rail line via Puget Sound ports, with the steamship service on the delivering end of the line, would be equally successful. Now, there is another feature to this; I think I gave it already. The Southern Pacific Company, the Central Pacific Company, is the home line, well understood. It is like the Northern Pacific at St. Paul. * * *

Sunset route serves very large productive territory.

"It is not only recognized as the home line, not only the popular line, notwithstanding seasons of apparent great unpopularity, but the people have a pride in it. Moreover, the merchants of San Francisco are dependent upon the Southern Pacific, whose lines extend into the interior, opening up the consuming territory which supplies their trade, for the facilities of transportation; they are more or less dependent upon the Southern Pacific as they are not upon any other carrier, not even the Santa Fe. In fact they have always called upon the Southern Pacific for any new movement, new construction, new facilities, anything and everything that promised to improve the mercantile or commercial conditions, the opening (3912) up of new territory for them. In other words, the Southern Pacific is California's baby, you know, in a certain sense, and they will nurse it when they won't nurse any other line, and they will spank it when they would not spank anybody else. Now

S. P., California's baby.

while that is a sentimental reason it is a very powerful reason why the Southern Pacific Company controls traffic for its line, for a line understood to be Southern Pacific line, all the way through, against any other influence that can be exercised."

Blye's tables.

In respect to the tables in the record appearing in the testimony of Mr. Blye, pointing to the falling off in the Sunset Lines' percentages of New York traffic, they began to decline in 1891, I think, and Blye's records show it was less than 79 per cent. in 1895, less than 69 per cent. in 1896, less than 48 per cent. in 1897, 41 per cent. in 1898, 40 per cent. in 1899, 43 per cent. in 1900 and 39 per cent. in 1901. There was a decline from 79 to 39 between 1895 and 1901, and if there is any suggestion that the falling off in the Sunset percentages is to be imputed to the so-called "merger" it looks to me that the recapitulation of those figures would meet it. These percentages cover not only California but Asiatic business, British Columbia business, all Transcontinential territory which on the Short Line is west of Kuna, and on the Southern Pacific Line west of some point near Corinne. The decline from 79 to 39 is explained by very natural conditions.

(3913) "The growth of the northwest was very rapid, much more so than California; the increase of traffic to the northwest was more rapid and relatively greater in bulk than it was to California. The completion of the Atchison, Topeka & Santa Fe road had stirred the trunk lines to greater endeavor; their activities were such that a larger share of the traffic went that way, all-rail, than formerly went that way; in fact there was scarcely any commercial or industrial condition but what contributed to the relative—not the actual but the relative decrease in the movement via the Sunset route. These facts were known to Mr. Spence, who succeeded Mr. Hawley, in 1901. The percentages were no longer useful; they did not show the facts that we wanted to know, in one sense, and in another sense they showed too much—showed against the Sunset Route, when, as a matter of fact, the difference, the falling off, was only partially a decrease in the tonnage by the Sunset Route. More of it was caused by an increase from the natural growth of the business by the all-rail route. Mr. Spence, acting upon his own motion, discontinued exchanging those percentages with the trunk lines for that reason, and my recollection is that either he volunteered the information to me or some objection was made by the trunk lines, and I took it up with him and he explained the reasons why he had done it, and I let it stand, did not change it, because I thought he was right in the matter. Now, that is all the significance that can be attached to the reduction of those percentages it seems to me."

Percentage of reduction not significant.

Relative growth of Pacific Coast territory.

In respect to the completion of the Santa Fe line to Southern California as a factor in the relative reduction of the Sunset takings, everybody on the Coast knows how much more rapidly Southern California grew than Central or Northern California. That is a very important factor in the case. And most people know how the Northwest, Seattle, Tacoma and even Portland and

Spokane grew—much more rapidly than Central California or San Francisco if you like. In 1901 up to and including the time of the stock purchase by the U. P. of S. P. stock, I was the Chief Traffic Officer of the S. P. and I was never called upon by anyone connected with that stock purchase at any time for any information in respect to the traffic takings of the Sunset lines.

Asiatic business overrated.

(3914) In respect to the so-called Asiatic business; and prior to June 30, 1901, I think generally speaking the Asiatic business has always been over-rated. For the year ending June 30, 1901, the tonnage passing through San Francisco in both directions, probably inclusive of Portland, is about 34,000 tons, and the earnings for both U. P. and S. P. about $375,000. The organization of the Portland & Asiatic Steamship Line was made in 1900. The vessels were chartered in 1900, but they did not go on as I recollect until the early part of 1901. I am not sure whether it was before or after July 1st. These are the steamships that were put on subsequently to the vessels operated in that business out of Portland, and which have been referred to in the testimony, the Dodwell Line for example.

Portland line to the Orient, to take care of flour and grain

The line to the Orient out of Portland was primarily established to take care of the flour and grain traffic produced on the line of the O. R. & N. and marketed in Asiatic country, the wheat being produced in most part I think in Eastern Washington, some in eastern Oregon.

Why necessary to provide steamship line for grain and flour.

If that wheat had not moved into Portland and was not milled in Portland, or if it were milled in the interior and had not moved into Portland, it could have gone out via Tacoma or Seattle, the wheat being milled at either one of those points, or the flour going through those points. Many of these grain producing and milling stations in eastern Washington are common between the Northern Pacific and the O. R. & N., and their product was competitive no matter where the ultimate destination of the product was, even for Europe or for Asia. The grain might move into either a Puget Sound port (3915) or Portland, and then go by sea to its ultimate destination.

There were flouring mills at Portland, Tacoma and Seattle. Without an outlet for this wheat and flour from Portland, it would have sought the Orient through Puget Sound gateways; it would naturally move into Puget Sound over the N. P.; and at points which may be said to be local to the O. R. & N. it would have been short-hauled to the first junction with the Northern Pacific and then moved into Puget Sound. My understanding is that the steamship or boat service was established as ancillary or auxiliary to the rail business of the O. R. & N. originating in Oregon and Washington.

I was not connected with the O. R. & N. in 1900, and for some time after going to Chicago knew very little about these local conditions, was not concerned in them; but the question has come up once or twice since as to whether these charters should be renewed, and the P. & A. line continued; and the controlling reason for continuing that steamship line has been that it was necessary in

order to take care of the grain business of eastern Washington and eastern Oregon that might have moved out by Puget Sound and would if we did not have the gateway there. That boat service in and of itself, as distinguished from the rail service, has always been operated at a loss—its earnings have never paid the cost except in one year, the year of the Japanese-Russian war. The Asiatic flour tonnage from the Columbia River was much greater as a rule than the volume of other Asiatic business moving by the port of San Francisco and the port of Portland; that is to say the movement of flour and grain from Columbia River points, which includes Portland, to Asiatic ports, was greater than the total movement of Asiatic business in and out through the ports of San Francisco and Portland, and that was the situation as I now recollect it for the year 1901.

Boat service maintained at a loss.

(3916) The flour movement was always given the preference and that is one reason why it is impossible, with the fleet we have, to use the Portland gateway advantageously for any movement of what we call transcontinental traffic. As to the inward bound movement, there was nothing to bring back except the general merchandise business that was common in so far as its opportunity for movement to all the ports. The sailings of the P. & A. averaged about once a month; the sailings between Yokohama and San Francisco were for many years and at this time not less than every nine days—referring to 1901 and prior to that year—and they were at least that often to Puget Sound and sometimes oftener. The inward bound Asiatic business moved almost wholly all-rail. The San Francisco tonnage moved almost wholly via the Central Pacific and U. P.; the movement through Portland was practically altogether via the U. P. line—speaking with respect to the volume of tonnage that moved to and east of the Missouri River—that was the volume.

Inward bound Asiatic traffic.

(3917) In respect to the inward bound Asiatic business through the Port of San Francisco, the Occidental & Oriental Steamship Company was engaged in the water-carriage part of that business. This steamship company was organized by the U. P. and men controlling the S. P., each interest representing one-half interest in that organization. Its vessels were chartered. I think the first three vessels were chartered from the White Star Line, and were laid on usually between Japanese and Chinese ports and San Francisco, thus making a through line from the Missouri River to those points, that was owned and controlled by the U. P. and S. P. jointly.

O. & O. S. S. line organized by U. P. and S. P.

The O. & O. was formed, with the above mentioned relations of the U. P. and S. P. to it, at a time when neither the S. P., nor the Central Pacific nor its people, had any interest whatever in the Pacific Mail. It was prior to the stock interest of the S. P. in the Pacific Mail. The O. & O. and the P. M. were co-operative in this Asiatic business, the P. M. agencies in the Orient and at San Francisco acting as agents to the O. & O., and their sailing schedules were made jointly in proportion to the number of ships each had in the line.

O. & O. and Pac. Mail co-operative.

U. P. always worked San Francisco port preferentially.

The P. M., the O. & O. and the rail line out of San Francisco through Ogden to the Missouri River were a through line from the Orient to the overland destinations, and prior to and including the year 1901 the U. P. always worked the port of San Francisco preferentially for Asiatic business. If the U. P. had undertaken to force Asiatic business by the P. & A. (3918) it would not have hurt anybody but itself, and I cannot see that it would have any interest to do it. It had its interest in the O. & O. and the U. P. proper had a longer haul into Ogden than it would have had if it took it to Granger—the U. P. proper.

Bearing in mind the conditions concerning the service in the Portland and Asiatic lines, including the Dodwell line, the ships that have been spoken of in the record—bearing in mind the character of service afforded there and the purpose of installing that boat service to meet the demands of the local flour and wheat traffic, it is the fact that during all of that time the U. P. and the S. P. were members of the through Asiatic Line via the port of San Francisco which the U. P. constantly worked preferentially for that port.

Routes from seaboard to Colorado-Utah common points.

The S. P. and the U. P. were engaged in business between Salt Lake City and other Utah common points and the Atlantic Seaboard —the S. P. since about 1888. The U. P. distance to Salt Lake from Omaha is 1,037 miles, from Kansas City 1,161 miles. The S. P., counting the H. & T. C. Ry. as a S. P. interest, would reach to Fort Worth, Texas. From Fort Worth to Denver would be what is now known as the Colorado Southern, and beyond that to Salt Lake City either the Rio Grande Line, or the U. P. From Fort Worth to Salt Lake City by the Colorado Southern and D. & R. G. is 1,308 miles.

(3919) This would be 271 miles in excess of the distance from Omaha to Salt Lake City. From Fort Worth to Salt Lake City by the Colorado & Southern to Denver, and thence by the U. P., it is 1,431 miles or 270 miles further than from Kansas City to Salt Lake City over the U. P. rails via Denver. As between these rail lines there would be the Colorado & Southern and the D. & R. G. on the one hand, and the U. P. on the other, in that business north of Fort Worth. So far as the movement of business is concerned there was nothing to prevent the U. P. from working with any and all lines that would deliver the business to that road at Omaha or Kansas City, and nothing did prevent it.

The U. P. worked with all its connections. That is a matter of public knowledge among railroad men. The S. P. for this Utah traffic was an initial carrier, taking up the business at New York City, thence by its steamers to New Orleans, thence over these lines I have described to Houston, thence over the Houston & Texas Central to Fort Worth; there its interest and control over the traffic ceased and there it delivered the traffic to the Colorado & Southern which carried it to Pueblo or Denver, delivering it to the Rio Grande

at Pueblo and possibly to the Colorado Midland at Colorado Springs or through a connection that would reach Colorado Springs; or to the U. P. at Denver.

(3920) Mr. Love testified that he shipped some business over that route and used the Union Pacific west of Denver, sometimes —not always. The all-rail routes, or the South Atlantic steamship and rail routes would be the initial carriers from New York as against the S. P. boat line on this business. There are the trunk lines, not necessary to name them, through Chicago and their connections through Chicago and to St. Louis, Omaha, and Kansas City, the short line being the Pennsylvania, which might go through Chicago or St. Louis, the average length of the Pennsylvania road and its connections via Kansas City and Omaha to Salt Lake City being 2,624½ miles. Initial carriers.

All these trunk lines made the same rates. There were several ocean and rail lines by way of the South Atlantic ports, like Portsmouth, Newport News, Norfolk, and Savannah. The ocean haul from these lines from New York to the port ranges from 325 miles via Norfolk to 814 miles via Savannah. Then there were the Gulf lines, the Mallory line and the S. P. line, serving New Orleans and Galveston, the ocean haul to New Orleans being 1,800 miles and to Galveston 2,200 miles. I figure the average haul from New York City to Salt Lake City via the South Atlantic ports—Portsmouth, Norfolk and Savannah—at 3,062 miles, or 121 per cent. of the short all-rail haul, and the average haul via the Gulf ports at (3921) 3,965½ miles or 157 per cent. of the all-rail distance and 129½ per cent. of the distance rail and water by the South Atlantic ports. The all-rail rates are the standard rates. All trunk lines make same rates.

The ocean and rail rate by the South Atlantic and by the Gulf ports are the same, but with a differential under the all-rail rates by a scale of 30c for first class. The U. P. service whether in connection with all-rail lines or with broken service, water and rail, begins in either event at Omaha or Kansas City. The distance from Omaha to Salt Lake City on the U. P. has been reduced 29 miles since 1901. Distances compared.

If the S. P. steamship lines and rail lines, referring to the H. & T. C. Railroad, take the freight that freight, when it arrives at the taking point of the Colorado & Southern at Fort Worth, will be 270 or 271 miles farther from Salt Lake City than if it had been delivered to the U. P. at Omaha, and this distance might be still longer according to the route used west, either west of Kansas City or west of Fort Worth. (3922) Salt Lake goods moving from New York via the Morgan Line and the H. & T. C. would, upon reaching Fort Worth, be 271 miles more distant from Salt Lake City than upon arrival at Kansas City to be forwarded over the U. P. to Salt Lake City.

Assuming provisionally that any interest controlling the S. P. should withdraw the ships from the Utah business, there would be the Mallory line which serves that business through the Gulf and

Light tonnage to Utah.

which has been operating continuously between New York and the Gulf ever since a time prior to 1882 or 1883. The tonnage to Utah from New York via the S. P. in 1900 was 1,632 tons. In respect to the testimony of Mr. Love and Mr. McCarthy at Salt Lake City about their use of the Gulf Routes and their respective estimates as to 90 per cent. and 70 to 85 per cent. respectively of their business moving through the Gulf ports to Salt Lake City previously to 1901, of course I can't check those statements; (3923) but from the best information obtainable by us we make out that less than 55 per cent. of the Seaboard business to Salt Lake City moved via the Gulf ports, and the statistics we have since obtained, these 1,600 tons, since that estimate was made, show that certainly that is over the mark very much—55 per cent. I have heard read now the following testimony of McCarthy at Salt Lake: "Q. From your knowledge of movement of freight, what percentage of the business into Salt Lake City from Atlantic Seaboard territory would you say moved by water and rail lines combined, previous to the amalgamation of the Southern Pacific and Union Pacific? A. I should say a conservative estimate would be 70 per cent. Q. I ask what percentage of the business moved by the broken, rail and water lines, either by the Union Pacific line or by the Gulf Route; I mean as opposed to the all-rail route from the Seaboard? A. I answered with that understanding —70 per cent."

McCarthy's testimony as to percentage of seaboard business moving water and rail.

As I read that over, somewhere I found he stated that from 70 to 85 per cent. of the Salt Lake Hardware Company's business moved by the water routes, and I think his testimony went to show that he shipped altogether by the Gulf Routes. I don't know that it is important. However that may be the assignment to the water routes, South Atlantic and Gulf—1900 up to 1901—of a percentage of 90 per cent. or from 70 to 85 per cent. of the Salt Lake business as against the all-rail lines, would be an exaggerated percentage. In respect to the Mallory line, the S. P., the H. & T. C. and the Colorado & Southern would be a line for which the counterpart as a gulf route might be said to be the Mallory line, the International & Great Northern, and again the Colorado & Southern, or the Mallory line and the Gulf, Colorado & Santa Fe, or the Mallory line and the M. K. & T.—several routes could be made from it and any one of them could drop out of the situation and not be missed.

Exaggerated percentage.

(3924) I have not the figures to show the exact proportion of Utah business by broken service as opposed to all-rail lines from the Seaboard territory for the period previous to 1901—that is that we have been able to get. I believe that Mr. McCarthy was for years U. P. agent at Salt Lake, but not when he testified, and Mr. Love is at the head of the traffic, traffic manager of the largest mercantile institution in Utah. I perhaps would oppose with some degree of success the opinion of Mr. Love or Mr. McCarthy as to the general situation, not however when they spoke with respect to their own particular business.

Would oppose opinions of Love and McCarthy as to general situation.

I was not personally in touch with this business nor were they, outside of their own particular business. (3925) My source of information with respect to business not their own would probably be quite as good, and in my judgment would be better and more accurate than theirs. I would say that if Mr. McCarthy were there to-day as the representative of the U. P., my sources of information in my present position or any position that I ever held, even when only representing the S. P., were better than his. Our Salt Lake Agent before 1901 was I think Mr. Gray—we had several.

The Salt Lake agency of the S. P. was seeking the business by the Gulf Route and I presume Mr. McCarthy and his agency, if he was there in that capacity, was seeking the business by the U. P. (3926) I have no personal information as to whether before the "amalgamation" of the S. P. and U. P., the U. P. agency at Salt Lake was working with the Kanawha Despatch, but otherwise I was pretty well posted about the business between the Seaboard and Salt Lake. (3927) The best information we could obtain would make the movement via the Gulf ports 55 per cent. And I made that statement with the understanding in my mind that McCarthy had made it from 70 to 80 per cent., and Love, 90 per cent. The other 45 per cent. moved by the broken rail and water lines, South Atlantic ports, and all-rail, but as to the proportions, respectively, I have not inquired.

About 55 per cent. moved via Gulf ports.

From Fort Worth to Salt Lake via Pueblo and the D. & R. G. it is 1,308 miles, and via Denver and the U. P. 1,431 miles. I think after 1901—whether just before or after I don't know—we opened a line to Galveston. (3928) We simply transferred the regular sailings of freight from New Orleans to Galveston for the rail line, and we have always during certain seasons of the year served the port of Galveston, but the regular line was not established until somewhere about 1901, and it may have been later. The S. P. route from Galveston to Fort Worth was by the G. H. & S. A. up to Houston, a little over 50 miles, and then, as in the case via New Orleans, by the H. & T. C. up to Fort Worth. The route via Galveston lengthened the water haul, and shortened the rail.

Transferred at Galveston.

The P. & A. Line was inaugurated early in 1901, the company being organized in 1900. For a good many years before that different lines of steamers had served the Port of San Francisco, and I presume they connected and interchanged traffic with the O. R. & N. to the Orient. At one time, there was a line put on by Samuels & Co. from Portland to the Orient, doing a through business to the eastern part of the United States—the Samuels line might have made up a through line under contract with the O. R. & N. to the Missouri River in connection with the O. R. & N., Short Line and U. P., but I can't say whether the Samuels Line had any contract with the O. R. & N. (3929) According to my recollection the O. R. & N. and the Samuels Line interchanged traffic with each other. I understand Dodwell had a line on there for a time with an ordinary interchange arrangement with the O. R. & N., but whether there was any contract behind it, I don't know. Whether inward

Portland & Asiatic line.

tonnage from the Orient was handled to the East exclusively over the O. R. & N., Short Line and U. P., I don't know. I would presume it would be, but I do not know. The Samuels line and the Portland & Asiatic had the same ports of call in the Orient as the Pacific Mail, I think, but there may have been some exceptions. An occasional vessel may have gone up to Vladivostok, which the Pacific Mail did not do.

Tonnage before 1901.

I have not accurate information as to the tonnage from the Orient by the Samuels line before 1901. The tonnage I testified to has been collected in view of this suit, that is the reason I happen to know it. The O. R. & N. when it established the P. & A., as I recollect it, put a traffic man over there in the Orient to seek the routing of business this way, soliciting business for that line in connection with the rail lines of the U. P. and sub-lines to Portland in the same ports with the Pacific Mail. (3930) I testified at one time that the line through Portland was in active competition with the lines that I represented through San Francisco. I still say that, in that sense. I have nothing to do with the P. & A. which is run by Mr. Schwerin, as is the P. M. The O. & O. is still running.

The Occidental & Oriental line still running.

Mr. Schwerin has not anything to do with the traffic of the Japanese Lines. The P. M. organization are simply their agents not to secure traffic. I think they have their own independent organization, so far as that. I am giving my best judgment, I don't know. The local agency which is not an agency for the soliciting of traffic, at San Francisco I think is the same for the Japanese as for the other lines. The U. P. I think owns the stock of the O. S. L., and these companies, both or either, own the stock of the O. R. & N.

U. P. has through line from Asia to Mo. River.

(3931) As to Asiatic business via Portland by the P. & A. or its predecessor lines, the U. P. as owner of the O. S. L. and O. R. & N., has practically a through line from Asiatic ports to the Missouri River. If the Asiatic business moved through the port of San Francisco, the Union Pacific had a half interest in the Occidental & Oriental, and the haul from Ogden to the Missouri River. In respect to the P. M., the U. P. interest had no interest in that particular movement except the haul from Ogden to the Missouri River. I do not recall a single shipment inward bound, of Asiatic business by the Sunset Route—am under the conviction that no attempt was ever made to send that business via the Sunset Route.

Atlantic seaboard traffic to Orient small, via Sunset.

(3932) The movement of business to the Orient originating in Atlantic Seaboard territory by the Sunset Route was very small. I don't know that the S. P. organization in New York as a regular thing tried to move the business that way, there may have been cases depending upon the character of the freight where the S. P.'s New York agency did attempt to send the business that way, but it didn't amount to a great deal in my judgment. Cotton moved to the Orient from S. P. territory in Texas through San Francisco, also through Portland and also through the Puget Sound Gateway, but that cotton originated for the most part upon S. P. lines in Texas.

Texas cotton shipments.

Cotton moved to the Orient by St. Paul west over the G. N. and N. P. I doubt whether there was much Texas cotton moved out via St. Paul. I think some of it, very, very little of it went up through Kansas City; for the most part the Texas cotton moved out via Galveston or Houston over our lines. The cotton business to the Orient at one time was quite extensive, all the lines and vessels seeking it, but I might qualify that by saying according to my recollection, the S. P. was only seeking that which originated on its own lines in Louisiana and Texas; I don't think we ever made any attempt to go east of the Missouri River or up into Oklahoma. (3933) I am not so sure that other lines were seeking to take cotton from S. P. territory into Northern ports. I think the rate conditions were such as to send that Texas cotton out southward to the Gulf. I wouldn't be accurate about that, but that is my general impression.

So far as the maintenance of the P. & A. in connection with the O. R. & N. is concerned, the P. & A. was put on primarily for the purpose of moving grain and flour to the Orient, and I understood that was the fact previously. This traffic as I stated was very largely competitive with the N. P. in eastern Washington—quite a considerable business, enough to exceed the total tonnage, in and out, of the other Asiatic traffic. There is some competition between the U. P. system and the N. P.—I am only hesitating to answer whether it is great or small. They compete at Portland, and in some measure although greatly to the disadvantage of the O. R. & N. at Spokane, and there are other points in Eastern Washington where they compete—I believe they compete at Pendleton, greatly to the disadvantage of the N. P. That is about all I can think of. The traffic into Portland I should say is worth seeking.

N. P. and U. P. compete at common points.

I think whenever the N. P. and U. P. serve a common point, they each undertake to get, under fair and reasonable conditions, all they can, (3934) each trying to get the business, and in that particular case, I would say it was competition, and that in some respects the N. P. and U. P. were competitive systems. In respect to the Sunset Route the fact that the water carrier was the initial carrier, taken in connection with all the facts I have connected it with, is very important. I would not be willing to say that in all cases that might be so, but in this particular case that circumstance is very important.

Competition between N. P. and U. P.

The Sunset Route was seeking eastbound traffic in which case the rail line was the initial carrier, and got quite a good deal of business, but we originated that business (3935) and in getting that business we competed in one sense part of the way against ourselves. We tried to move by the Sunset that business which could move with success, not all of the business, there was a great deal of it we didn't try to move that way. The U. P. maintained and still has a traffic agency in San Francisco, and the S. P. had its agency in San Francisco. As to whether I have stated that a soliciting agent was regarded by me as very valuable in securing traffic, I think it would be puzzling to find where I so stated it. I said they were valuable, and I still think so. The agents of the U. P. were

U. P. and S. P. maintain separate agencies in San Francisco.

undertaking to get business over the S. P. line—the joint line of the U. P. and the S. P.

(3936) The S. P. agency was trying sometimes, not always, to move business to the Atlantic Seaboard, where it would properly move that way. We wanted 100 per cent. of the haul, and if we got that business the U. P. did not share in any of that revenue. In respect to my stating in Chicago in reference to the Portland Route, which I have called today an impracticable route, that I wouldn't say the route is impracticable, but I would say it would be inefficient as compared to the all-rail route, I am probably a little more exact in the one case than in the other—I think probably they come to the same end. When you consider the line in its relation to capacity of doing the business or getting the business it is an inefficient line, and I don't know but I would be quite willing to substitute the word "impracticable" for "inefficient" in both cases. It is a matter of opinion, of course. I think it is an impracticable route; so do you (addressing counsel for complainant).

Portland-San Francisco route inefficient.

I think that if the rate was put down by way of Portland, it would go down all along the line. Referring to Blye's figures, those statistics included all business from New York to all of the transcontinental territory from the Mexican Border up to British Columbia and also the Asiatic business. (3937) I stated that one reason for the lesser percentage in 1901 than in the earlier years was because of the great development of the northwest, served by the other lines. I don't know absolutely whether during all these years the absolute tonnage of the Sunset increased or not, it may have done so in one year and fallen off the next. The Sunset Line had the effect of stimulating the lines, particularly east of Chicago, to better endeavors. The U. P. did the best they could, but were handicapped by the indifference of their eastern connections.

U. P. handicapped by connections.

I think they continued to give good service and I don't think they ever ceased to solicit business for the joint line. (3938) I suppose that is taken for granted. We might just as well not bandy words on that. The U. P. couldn't get into California without the use of the Central Pacific; the U. P. agent couldn't solicit business for his line without soliciting for the S. P. If the S. P. secured the business by the Sunset, the U. P. did not share in it. I should think the only way the U. P. could get any revenue out of transcontinental business was to move it over its line and thence over the S. P.

Only way U. P. could enter California.

At the opening of the overland route the time of the Panama route was about 45 days. As to its being the same now, I don't know of any improvement in it, I couldn't be sure about that. I don't know anything about that. My impressions are, if you were to pursue that inquiry of Mr. Schwerin, you would find where the fault was, and that it wasn't with him. The American-Hawaiian Line, as I understand it, gives very much better service between New York and San Francisco, (3939) and I think it would be regarded as an active factor in the competition for transcontinental

business. It is an entirely independent line, having no arrangement with the Transcontinental Lines as to rates.

Wholesale points and rates.

The principal wholesaling points in Northern California are San Francisco, Sacramento, Stockton. They can be reached by water. The San Francisco and Sacramento merchants wholesale north, south and east, the traffic moving out on local distributing rates from Sacramento or San Francisco. Most of the merchants in the territory indicated roughly (by counsel for complainant—"over to Salt Lake perhaps or through Nevada and in California north of the Tehachapi and up into Northern California toward Oregon") get their supplies from San Francisco and Sacramento merchants to a large extent. Between the rates from San Francisco or Sacramento to Ogden or Salt Lake City, and the rates from Omaha to Salt Lake City, there has been a certain relation, at one time 86 per cent., I believe now 75 per cent.—I am not sure (3940) whether 75 per cent. of the rate from Chicago or of the rate from Omaha. This relation of rates is to enable the San Francisco and Sacramento merchants to sell their goods in that market in competition with wholesale merchants anywhere, it might be with the products locally.

Relationship of rates.

"The rates between San Francisco, the California jobbing points, on the one hand, and Omaha on the other hand, to Utah common points, bear a certain relation each to the other, and always have; that is, for a long time. Just what that relation is at present I do not know. I have been out of the rate business, you know, for some time, that is, the technical part of it. But it is not true that there is any material, if any competition at all, between the jobbers of San Francisco and the jobbers of Omaha or any other eastern point, on goods which are manufactured in the East and taken by any route to San Francisco. In the early days there was such a business, but that has been dissipated for a long time. I do not think that the amount of business that is distributed by the California jobbers into Utah, which originated in the eastern territory, for years has been worth noticing. There may be sporadic cases of that, but generally speaking, my statement is correct; at least it represents my belief in the matter."

Coast rates to Nevada and Utah.

(3941) If it should be the fact that Mr. Luce, General Freight Agent of the S. P., Pacific System, had testified concerning the rate from Sacramento and San Francisco to Nevada and Utah points as follows: "Then as I understand it Mr. Luce the San Francisco-Ogden rate was made upon the basis of 75 per cent. of the Missouri River rate and upon the full measure of the Colorado-Ogden rate in order to enable the San Francisco shipper or manufacturer to compete with those other communities into the Utah common territory? MR. LUCE. That was the precise reason. We endeavored to carry that business from San Francisco and Sacramento to Ogden and Salt Lake, instead of its being handled from the Missouri River direct to those points and from Denver;"—I should still let my statement stand as representing my belief and knowledge. If you would get down to the particular business

Mr. Luce was talking about you might find that there was not so much difference between what he said and what I say. I know, as a matter of fact, that there has been a very great change. When I first went to California, California did a great deal of business with Utah over the Central Pacific. With regard to the Portland route to San Francisco by the Union Pacific, and as to whether a mere matter of distance does not always affect the ability to compete, I have spoken in terms of contrast, in days rather than distance—that is what I meant and intended. I said that the five days' additional time, and that is the minimum, required to send business via Portland, was fully one-half of the time required for the total movement from Omaha to San Francisco.

Time rather than distance.

(3942) The length of haul is not always the controlling factor. While the route from Salt Lake via Omaha by the Burlington and the D & R. G. is about 300 miles longer than the U. P. direct line, I would not advance that reason by itself considered, nor would any practical man, but there are a number of considerations that enter in. Those that I gave are more controlling. The main feature of it is that it was not to the interest of the U. P. road to do it. I think it is obvious that they never felt it was to their interest to try to work traffic that way. There is a Transcontinental Freight Bureau organization to-day, practically. The various transcontinental lines, including those to Puget Sound, Portland and Vancouver, unite in a common transcontinental rate, arrived at by conference.

(3943) Naturally the views of the lines to the north Pacific points are considered, and they all have a vote on the question. The same kind of commodities are moved to north Pacific Coast points and to California points, but not always under the same rate; I suppose there are differences today, and there have been times when the differences were quite general. I think class rates are the same, and I believe that more of the commodity rates are alike than unlike, but I am not an authority on that. I should think it is the general policy that transcontinental rates to all Pacific Coast terminals shall be uniform, usually they are, it ought to be so, but we are not always able to bring that about, there is quite a good deal of difference. Portland and San Francisco are wholesaling into the same territory to some extent, but not so much as they were formerly, and that has its influence in keeping the coast rates uniform, I think.

Uniformity in coast rates.

(3944) The representative at these transcontinental meetings of every road that is a member of the association, has his opportunity to express his views and judgment and desires about it, and if it is a question necessary to vote on, he has an opportunity to vote. While the uniformity of rates, determined in conference, reduces the matter of competition very largely to a question of service, solicitation, seeking to get the business by giving good service, by settling claims promptly and doing other things, still in making these rates, even these class rates and these commodity rates, it

remains true that they could not be made so far as California is concerned without the consent of either or both of the terminal lines.

California rates could not be made without consent of terminal lines.

While service and solicitation are elements, and important elements in competition, I wouldn't want to say whether they were all or not In 1885, I believe, the Santa Fe went up to San Francisco Bay over the S. P. line. The lease of the Needles branch to the Santa Fe,—the full transfer could not be made as long as the S. P. bonds were outstanding—put them into Mojave, and they wanted to get into Stockton, Sacramento and San Francisco, and we made a connecting line contract with them for interchange of traffic (3945) as with any other connection with divisions of the through rates and a right upon 90 days' notice or 6 months' notice to enter upon a joint use of that track from Mojave to San Francisco on certain terms.

Connecting line contract, with Santa Fe.

Afterwards they acquired the San Joaquin Valley line and we gave them trackage rights (which are still in force) over the Tehachapi Pass from Mojave to Bakersfield. In 1881, when they connected with us at Deming, they made a through line and sought transcontinental business; and the completion of the Atlantic & Pacific to Needles for the time being made a line of the Santa Fe east of Albuquerque, Atlantic & Pacific west to Needles, and S. P. from Needles on. The Santa Fe line to San Diego was built by some one else who failed and sold the line to some people interested in the Santa Fe, and they finally had to rebuild it and they connected it with the Santa Fe line at Barstow, and sold it, subsequently to 1885, to the Santa Fe.

San Diego line of Santa Fe.

(3946) That line was hawked about for sale. I am not sure that the Santa Fe did not have that line or a connection with it to San Diego before they completed their own line to Los Angeles, but they had an interchange arrangement with us from San Bernardino into Los Angeles, on getting possession of the Barstow Line. In 1870 the first-class rate to California was $6.00 per 100. I don't remember the Panama rate at that time, it fluctuated. As I recollect, the Panama route for some time was able to maintain a pretty steady tariff because of the limited tonnage they could carry in their vessels. The real controlling factor was the Cape Horn route.

The Central Pacific proper was built eastward from Sacramento to Promontory; the U. P. westward to Promontory, where the rails joined. The Central Pacific and U. P. had graded east and west of Promontory, respectively, for some distance, the U. P. almost to Wells. After controversy, the junction point was finally settled as a point 5 miles west of Ogden, and the U. P. gave to the S. P., or Central Pacific a perpetual lease of the 5 miles, so as to make the terminus at Ogden. The Western Pacific purchased in 1870 by the General Pacific and finally consolidated into the Central Pacific Railroad Company, was from Sacramento down through Stockton, Niles, to San Jose.

Building of Central Pacific and U. P.

Extensions of Central Pacific.

Some lines were built—I think they (3947) were independent—from Niles into Oakland, and purchased and consolidated by the Central Pacific people. That was the original Central Pacific line. North from Roseville Junction, 18 miles east of Sacramento, the California & Oregon road, a Central Pacific property, was built and under that corporate title went to the Oregon State Line, there joining the line built south, which had been built originally by Ben Holiday under the title of the Oregon & California. From Lathrop, 10 miles west of Stockton, the Central Pacific built a line down through Merced, and Fresno to Goshen, being the central one of the blue line on complainant's exhibit 107, opposite page 1015 of the record. The eastern line from Merced down to Goshen, was the S. P. line from San Jose south; they expected to build across over there, but never completed that link. The line from Lathrop to Goshen was built very early in the 70's and I understand is still part of the Central Pacific property, and all the other lines are under some other corporate title, I don't know what they are.

So far as the U. P. and S. P. are concerned, I don't remember as to whether substantially all of the cotton that went to the Orient and in the movement of which the U. P. participated at all, went by Ogden and the S. P. through the Port of San Francisco—the bulk of it—I would like to refresh my memory on that between now and the next hearing. I was generally under the impression that the cotton which we moved to the Orient originated on our own lines in Texas and went out by the S. P., and I think that is true as to the bulk of it—that it moved by San Francisco.

Cotton traffic to Orient.

(3948) "Q. Mr. Stubbs, I recall that Mr. Severance inquired yesterday concerning Asiatic traffic, and the comparative proportion of the Sunset-Gulf tonnage in the Asiatic tonnage; and I will begin with a statement which I have marked as Sub-Division 'A'. I will ask you to identify it; and you may indicate the Auditor's statement supporting it, if you have it there. Have you a statement of the west-bound Asiatic tonnage, volume and revenue, U. P. via Portland, and the S. P. via the Sunset-Gulf? A. I have such a statement. MR. DUNNE. It is a very short statement, and I think, if there is no objection, I will ask Mr. Stubbs to read it. MR. SEVERANCE. Who made it? MR. DUNNE. It was made by the Auditor. MR. SEVERANCE. Of what road? By Mr. Young? WITNESS. No, by Mr. Stebbins. Q. You might read that statement, Mr. Stubbs. It is very short, and I will have these papers marked. A. This is a statement of the west-bound Asiatic traffic, and its volume and revenue, for the Union Pacific and Southern Pacific, via Portland, and via the Sunset-Gulf route; movement outward and inward. MR. SEVERANCE. When? WITNESS. For the year ending June 30, 1901. Q. Now will you just read that, please. A. Via Portland, the total traffic was, tons 262; Union Pacific revenue $1,044.27; an average of 22 tons per month and $87.02. Via the Sunset-Gulf route, for the year ending June 30, 1900, (we couldn't get the figures for 1901), total traffic, tons

West-bound Asiatic traffic.

1,098; Southern Pacific revenue $24,789.92; average per month, 91 tons, $2,065.83. Q. You have the Auditor's statement attached? A. I have. That is simply a statement of the information that is embraced in the Auditor's statements that are attached. MR. DUNNE. I want to say, Mr. Severance, that for the Sunset-Gulf we have the Auditor's statement (Mr. Bartholomew's) which I will attach."

(3949) The statement just testified to by the witness was marked Defendants' Exhibit 45, and is as follows:

DEFENDANTS' EXHIBIT 45.

(Stubbs.)

Lovett's question No. 13.

Sub-Division "A"

WESTBOUND ASIATIC TRAFFIC.

Volume and U. P. and S. P. Revenue via Portland and via Sunset-Gulf Route.

Movement Outward.

(For Year ending June 30, 1901)

Via Portland:				
Total Traffic.....Tons..	262	U. P. Revenue.....		$1,044.27
Average per Month..... " ..	22	" "		87.02
(For Year ending June 30, 1900)				
Via Sunset-Gulf Route:				
Total Traffic.....Tons..	1,098	S. P. Revenue.....		$24,789.92
Average per Month..... " ..	91	" "		2,065.83

Authority: For traffic via Portland. Auditor's statements attached. For traffic via Sunset-Gulf Route. Statement of Auditor Atlantic S. S. Lines, Jan. 12, 1910.

Statement of tons carried and freight revenue of the Union Pacific System, on westbound freight traffic between the Orient and various eastern territories via Portland, Oregon, for the fiscal year ending June 30, 1901.

From—	Via—	Tons Carried	U. P. Sys. freight revenue
Missouri River common points territory.	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Mississippi River common points territory.	Granger	16.10	150.57
	Salt Lake City		
	Spokane		
	Wallula		
	Total	16.10	150.57
(3950) Chicago and common points territory.	Granger		
	Salt Lake City	140.69	689.37
	Spokane		
	Wallula	105.00	196.66
	Total	245.69	886.03
Cincinnati, Detroit and common points territory.	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Pittsburg, Buffalo, and common points territory.	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Boston, New York, and common points territory.	Granger	.16	7.67
	Salt Lake City		
	Spokane		
	Wallula		
	Total	.16	7.67
Total	Granger	16.26	158.24
	Salt Lake City	140.69	689.37
	Spokane		
	Wallula	105.00	196.66
Grand Total		261.95	1.044.27

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1901	8,209,209	43,538,181.01
Ratio of Westbound Oriental Freight Traffic via Portland to total tons of freight carried by and gross operating revenue of Union Pacific System.	0.003%	0.002%

NOTE—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of The Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

(3951)

Statement of tons carried and freight revenue of the Union Pacific System, on eastbound freight traffic between the Orient and various eastern territories via Portland, Oregon, for the fiscal year ending June 30, 1901.

To—	Via—	Tons carried	U. P. Sys. freight revenue
Missouri River common points territory.	Granger	239.68	2,921.32
	Salt Lake City	.....	.....
	Spokane	25.40	109.46
	Wallula	109.53	337.31
	Total	374.61	3,368.09
Mississippi River common points territory.	Granger	917.16	9,725.39
	Salt Lake City	.....	.....
	Spokane	62.85	261.11
	Wallula	36.85	125.34
	Total	1,016.86	10,111.84
Chicago and common points territory.	Granger	201.23	2,061.24
	Salt Lake City	.....	.....
	Spokane	347.19	1,308.35
	Wallula	58.36	195.85
	Total	606.78	3,565.44
Cincinnati, Detroit and common points territory.	Granger	178.76	1,931.31
	Salt Lake City	.....	.....
	Spokane	68 55	226.37
	Wallula	16.07	41.95
	Total	263.38	2,199.63
Pittsburg, Buffalo, and common points territory.	Granger	163.46	1,624.07
	Salt Lake City	.....	.....
	Spokane	76.25	237.82
	Wallula	52.09	136.45
	Total	291.80	1,998.34
Boston, New York, and common points territory.	Granger	2.935.78	28,119.14
	Salt Lake City	.....	.....
	Spokane	836 05	2.715 90
	Wallula	149.80	447.58
	Total	3.921.63	31,282.62
Total	Granger	4,636.07	46,382.47
	Salt Lake City	.....	.....
	Spokane	1,416.29	4,859.01
	Wallula	422.70	1,284.48
Grand Total		6.475.06	52.525.96

(3952)	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1901	8.209,209	43.538,181.01
Ratio of Eastbound Oriental Freight Traffic via Portland to total tons of freight carried by and gross operating revenue of Union Pacific System.	0.08%	0.12%

NOTE—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of The Oregon Railroad & Navigation Company. Owing to the destruction of records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

Traffic between Portland and San Francisco.

The statement marked "B" is traffic between San Francisco and Portland, the volume and earnings on the U. P. and S. P. lines, respectively, for the year ending June 30, 1901. The figures are as follows: O. R. & N., tons 76,700; earnings $217,050.55; S. P., 25,879 tons, earnings $110,691.80; a total of 102,579 tons; revenue as described, $327,742.35; being an average per month for the O. R. & N. of 6,392 tons, earnings $18,087.54; and for the Southern Pacific 2,156 tons, earnings $9,224.32 per month; a total average of 8,548 tons per month; total earnings, average $27,311.86 per month. The showing for the O. R. & N. is taken from the Auditor's statement. Because of the total destruction of the records of the S. P. by fire, the showing for the S. P. is an estimate, which assumes that the movement by rail for 1901 was equal to the average movement for the years ending June 30, 1907 and 1908,—an assumption very much against us, and applying a rate of $4.20 per ton, that being the average rate for years last above named.

(3953) The statement just testified to by witness was marked Defendants' Exhibit 46, and is as follows:

DEFENDANTS' EXHIBIT 46.

(Stubbs.)

Lovett's question No. 13.

Sub-Division "B."

TRAFFIC.

Between San Francisco and Portland, Volume and U. P. and S. P. Earnings, for Year Ending June 30, 1901.

O. R. & N. Co.	Tons..	76,700	Earnings	$217,050.55
Southern Pacific	" ..	25,879	"	110,691.80
Total		102,579		$327,742.35
O. R. & N. Co. Avg. Per Month	Tons..	6,392	Earnings	$18,087.54
Sou. Pac. Co. Avg. Per Month	Tons..	2,156	"	9,224.32
Total		8,548		$27,311.86

Authority: The showing for the *O. R. & N. Co.* is taken from Auditor's statement.

The showing for the *Southern Pacific* is an estimate which assumes that the movement by rail for 1901 was equal to the average movement for the years ending June 30, 1907 and 1908 (an assumption very much against us), and applying a rate of $4.20 per ton, that being the average rate for the years last above named. This showing is, *at best*, only a guess, but the guessing is an over estimate rather than an under estimate.

(3954)

Statement of tonnage and Union Pacific System (The Oregon Railroad and Navigation Company's) revenue on freight traffic handled by The Oregon Railroad and Navigation Company's Steamship Line between San Francisco and Portland locally (not including traffic to or from points beyond Portland) for the fiscal year ending June 30, 1901.

From San Francisco to Portland		From Portland to San Francisco		Total	
Tons carried	Steamship revenue	Tons carried	Steamship revenue	Tons carried	Steamship revenue
44,724	131,860.00	31,976	85,190.55	76,700	217,050.55

	Total Tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1901 (see note)	8,209,209	43,538,181.01
Ratio of local freight traffic handled by O. R. & N. Co.'s Steamship Line between San Francisco and Portland to total tons of freight carried by and gross operating revenue of Union Pacific System.	0.93%	0.50%

NOTE—Union Pacific System Lines include Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been approximated. The gross operating revenue is correct.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

Willamette Valley traffic.

With reference to "Sub-Division 'D,' Willamette Valley Traffic, year ending June 30, 1901. Excluding traffic to and from local points on Union Pacific system, rail and water lines, west of Ogden. Via O. R. & N., tons 37,066; Union Pacific system earnings $120,291.39; monthly average 3,088 tons, $10,024.28. From that is deducted as non-competitive 30,474 tons, the revenue from which is $83,481.02; remaining, said to be competitive, 6,592 tons, earnings $36,810.37; average per month 559 tons, $3,067.53. Via the Southern Pacific, estimated average per month 2,120 tons, earnings $12,196.50. Total average per month, 2,669 tons, earnings $15,264.03. The authority for this is the O. R. & N. Company's Auditor's statement which is attached. For the Southern Pacific, the tonnage is estimated at 50 per cent. more than steamship tonnage, and the earnings are computed at 90 cents per ton higher than the rate via O. R. & N. Co."

Freight traffic between San Francisco and Portland, not competitive.

(3955) Going back for a moment to Sub-Division "B," traffic between San Francisco and Portland, in my judgment that freight business was non-competitive as between the S. P. and the steamship lines. "My reasons for that statement are these: The steamship ser-

vice between San Francisco and Portland is better than the rail service, with this single exception—that the rail service is daily while the steamship service is probably only once in five days. The points of delivery and taking at San Francisco and at Portland favor the steamship line. In the early opening of the Shasta route, we had some ambition to load our trains north bound, and made some attempts to get the business, but found that we absolutely could not take the business as against the steamship lines, but, besides this is the fact that there were outside competitors with the O. R. & N.: other steamship lines, and steam schooners, that made the rates not only unremunerative, but they were unstable; so, after several attempts to join in that business, we quit. And that was before this merger, so-called—before the year 1901."

Referring to the expression "Deduct non-competitive," in subdivision "D," "that business which is deducted represents the tonnage to and from the paper mills at Willamette Falls, 15 miles above Portland, on the Willamette River. Those mills are on the west side of the river, and away from the reach of the railroad. They are served directly by boats. And we have never been able to take any of that business, in fact have not attempted to do it for many years; local to the steamship line," the O. R. & N.

In that same exhibit, is the statement that the tonnage for the S. P. is estimated. That was because of the destruction of the records; and we made the best estimate possible. My best judgment is that the tonnage for the S. P. is estimated at 50 per cent. more than the steamship tonnage and the earnings are computed at 90 cents per ton higher than the rate via the O. R. & N. Company. (3956), is over-stated; that it represents a taking by the rail lines more than the actual, if we were able to get the actual. The difference in the rate is derived by taking the average difference. On less than car loads, the difference in the rates, by sea, by the O. R. & N. steamer and by rail is $1.20 per ton; on carloads it is 60 cents per ton. I have added the two together and divided them equally, giving me the result of 90 cents, which, in my judgment, is against us. The paper testified to by the witness and identified as Sub-Division "D" was marked Defendants' Exhibit 47, and is as follows:

DEFENDANTS' EXHIBIT 47.

(Stubbs.)

Lovett's question No. 13.

Sub-Division "D"

WILLAMETTE VALLEY TRAFFIC.

Year Ending June 30, 1901.

Excluding traffic to and from local points on Union Pacific System, rail and water lines, West of Ogden.

Willamette Valley Traffic—Continued.

Via O. R. & N. Co.	Tons..	37,066	U. P. Sys. Earnings.....	$120,291.39
Average per Month....	" ..	3,088	"	10,024.28
Deduct Non-Competitive	" ..	30,474	"	83,481.02
Remaining Competitive,	" ..	6,592	"	36,810.37
Average per Month....	" ..	549	"	3,067.53
Via Southern Pacific—				
Estimated average per Month	" ..	2,120	"	12,196.50
Total Average per Month	" ..	2,669	"	$ 15,264.03

Authority: For the *O. R. & N. Co.*, Auditor's statement attached. For the *Southern Pacific*: Tonnage is estimated at 50 per cent. more than Steamship Tonnage, and the earnings are computed at 90 cents per ton higher than the rate via O. R. & N. Co.

(3057)

Statement showing tonnage and Union Pacific System freight revenue on freight traffic handled by Oregon Railroad & Navigation Company's Willamette River boats for the fiscal year ending June 30, 1901.

	Tons carried	Union Pacific system freight revenue
From San Francisco to the River.....	3,649	11,713.03
To San Francisco from the River.....	23,992	71,809.58
From Ogden and Beyond to the River.....	592	16,615.54
To Ogden and Beyond from the River.....	388	7,175.82
From all other Points in Northwest to the River...	755	3,912.49
To all other Points in Northwest from the River..	7,690	8,974.93
Total to the River.....	4,986	32,241.07
Total from the River.....	32,070	88,050.33
Grand total.....	37,066	120,291.39
Deduct the following traffic to and from the paper mills at Oregon City, which traffic is not competitive:		
From San Francisco to the River.....	2,512	6,553.68
To San Francisco from the River.....	20,104	56,557.75
From Other Points to the River.....	798	851.27
To Other Points from the River.....	a7,060	a19,518.32
Total	30,474	83,481.02
Balance	6,592	36,810.37

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1901 (see note).....	8,209,209	43,538,181.01
Ratio of competitive freight traffic handled by O. R. & N. Co's Willamette River boats to total tons of freight carried by and gross revenue of Union Pacific System.....	0.08%	0.08%

a Approximated.

NOTE—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon

Statement showing tonnage and Union Pacific revenue, etc.—Continued.

Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons of freight have been partially approximated. The gross operating revenue is correct.

Compiled by:

(Sgd) C. S. SIBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

Lumber and other traffic, Portland to Ogden and beyond.

(3958) The statement marked Sub-Division "E" "relates to lumber and other traffic from Portland to Ogden and common points and beyond, via the Southern Pacific Company and the Denver & Rio Grande Railroad, and via the Union Pacific system, for the six months July, September and November, 1900, and January, March and April, 1901. From Portland to points on and via D. & R. G. are: Via Southern Pacific, tons 1,428; S. P. earnings, $10,080.79; average per month, 238 tons; S. P. earnings $1,680.13. Via Union Pacific, tons 13,768; Union Pacific earnings $110,335.25; average per month, 2,295 tons, $18,389.10. This excludes traffic via S. P. Company to Ogden proper, on account of the destruction of the records, and also excludes railway material, that is, Company material. MR. SEVERANCE. Company business. WITNESS. Yes. Q. Was there any substantial traffic from Portland by Roseville to Ogden proper? A. I think there was not. The paper testified from by the witness, identified as 'Sub-Division 'E,'' was marked Defendants' Exhibit 48, and is as follows:

DEFENDANTS' EXHIBIT 48.

(Stubbs.)

Lovett's question No. 13.

Sub-Division 'E.'

LUMBER AND OTHER TRAFFIC.

From Portland to Ogden and common points and beyond via Sou. Pac. Co. and D. & R. G. R. R. and via Union Pacific System.

For the six months—July, September, November, 1900, January, March and April, 1901.

From Portland to Points on and via D. & R. G. R. R.:—

Via Southern Pacific	Tons.	1,428	S. P. Earnings	$ 10,080.79
Average per Month	"	238	" "	1,680.13
Via Union Pacific	"	13,768	U. P. "	110,335.25
Average per Month	"	2,295	" "	18,389.10

(Excluding traffic via S. P. Co. to Ogden, proper, account destruction of records, also excluding railway material.)

Authority: Auditor's statement attached.

(3959)

Tonnage and revenue on freight traffic (principally lumber) from Portland, Oregon, to Utah common points, Colorado common points, and points east thereof, competitive between the Union Pacific System Lines and Southern Pacific Company, Pacific System, for July, September and November, 1900, and January, March and April, 1901.

Month	Via Union Pacific system lines from Portland via Huntington		Via Southern Pacific Co. lines from Portland via Ogden and Rio Grande Western Railway		Total traffic from Portland	
	Tons carried	Un. Pac. System freight revenue	Tons carried	So. Pac. Co. lines freight revenue	Tons carried	Un. Pac. Sys. lines and So. Pac. Co. lines freight revenue
July 1900	2,374	18,457.25	686	4,166.90	3,060	22,624.15
September..... "	1,311	10,511.71	141	919.36	1,452	11,431.07
November ..... "	2,773	22,509.78	287	2,181.03	3,060	24,780.81
January 1901	1,772	12,897.36	120	1,029.19	1,892	13,926.55
March ..... "	2,936	22,351.26	140	1,210.71	3,076	23,561.97
April. ..... "	2,622	23,517.89	54	573.60	2,676	24,091.49
Total	13,768	110,335.25	1,428	10,080.79	15,196	120,416.04

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System lines (see Note 1) for same period ...	4,046,355	21,769,690.50
Total tons of freight carried by and gross operating revenue of Southern Pacific Company lines (see Note 2) for same period	7,134,694	38,622,449.09
	Per cent	*Per Cent*
Ratio of tonnage from Portland via Union Pacific System lines to total tons of freight carried by U. P. System lines ...	0.34	.....
Ratio of tonnage from Portland via Southern Pacific Company lines to total tons of freight carried by S. P. Company lines	0.02	.....
Ratio of freight revenue on tonnage from Portland via Union Pacific System lines to gross operating revenue of U. P. System lines	.....	0.51
Ratio of freight revenue on tonnage from Portland via Southern Pacific Company lines to gross operating revenue of S. P. Co. lines	.....	0.03

NOTES—1. Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is one-half of the gross operating revenue for the year.

2. Southern Pacific Company Lines include the So. Pac. Co.-Pac. System, and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called), and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of certain records by fire, the total tons carried and gross operating revenue have been approximated. The gross operating revenue is one-half of the gross operating revenue for the year.

3. Owing to destruction by fire of the records of the Southern Pacific Co. the information in respect to business carried via Rio Grande Western Railway was obtained from the Denver & Rio Grande Railroad Company, successor to Rio Grande Western Railway Company.

4. Owing to destruction of records by fire, the tons carried and freight revenue on traffic from Portland to Ogden, Utah, via Southern Pacific Company, are not included.

5. Railway material is not included.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

Traffic to and from Portland and Atlantic seaboard, etc.

The statement marked Sub-Division "F" relates to "traffic to and from Portland and Atlantic seaboard, Pittsburgh and Ohio River points, with Chicago, Mississippi River and (3960) Missouri River common points territory added, via Sunset route and via Union Pacific Granger route, for the fiscal year ending June 30, 1900. Via Union Pacific, tons 32,605; earnings $591,800.50; a monthly average of 2,717 tons, $49,324.20. Via Southern Pacific, east and west, tons, 3,139, earnings $56,159.44; average per month, 261 tons, $4,679.95. The statement just testified to by the witness was marked Defendants' Exhibit 49, and is as follows:

DEFENDANTS' EXHIBIT 49.

(Stubbs.)

Lovett's question No. 13.

Sub-Division 'F'

TRAFFIC.

To and from Portland and Atlantic Seaboard, Pittsburgh and Ohio River Points (with Chicago, Mississippi River and Missouri River Common Points Territories added) via Sunset Route and via Union Pacific Granger Route.

For fiscal year ending June 30, 1900.

Via Union Pacific.....Tons.	32,605	Earnings		$591,800.50
Average per Month..... " ..	2,717	"		49,324.20
Via Southern Pacific (East and West)..... " ..	3,139	Earnings		56,159.44
Average per Month..... " ..	261	"		4,679.95

Authority: Auditor's statements (2) attached.

Statement of freight traffic between Portland, Oregon, and points in Missouri River and common points territory and points east thereof via Southern Pacific Company-Pacific System, El Paso, Texas, and New Orleans, Louisiana, for the fiscal year ending June 30, 1900.

To—	Westbound		Eastbound		Total	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
Missouri River and common points territory	.....	.....	.....	.....	.....	.....
Mississippi River and common points territory	.....	.....	.....	.....	.....	.....
Chicago and common points territory	.....	.....	.....	.....	.....	.....
Cincinnati, Detroit, and common points territory	2.0	$ 62.02	.....	.....	2.0	$ 62.02
Pittsburgh, Buffalo, and common points territory	36.9	680.87	47.2	$ 756.70	84.1	1,417.82
New York, Boston, and common points territory	12.8	192.00	.....	.....	12.8	192.00
Total	1,404.4	31,742.82	1,635.8	22,744.97	3,040.2	54,487.79
	1,456.1	32,657.71	1,683.0	23,501.73	3,139.1	56,159.44

Statement of freight traffic between Portland, Oregon, and points in Missouri River and common points territory, etc.—Continued.

(3961)	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Southern Pacific Company lines for year ending June 30, 1900 (see Note)	12,243,763	63,920,414.22
Ratio of freight traffic between Portland and territories specified via El Paso and New Orleans to total tons of freight carried by and gross operating revenue of Southern Pacific Company lines	0.03%	0.09%

NOTE—Southern Pacific Company Lines include Southern Pacific Company-Pacific System, and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so called), and the Southern Pacific Company's Atlantic Steamship Lines.

Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

Statement of tons carried and freight revenue of the Union Pacific System on freight traffic between Portland, Oregon, proper, and various eastern territories via Granger, Wyoming, for the fiscal year ending June 30, 1900.

	Westbound		Eastbound		Total	
	Tons carried	U.P. Sys. freight revenue	Tons carried	U.P. Sys. freight revenue	Tons carried	U.P. Sys. freight revenue
Missouri River and common points territory	3,575.80	76,592.82	1,242.84	12,372.61	4,818.64	88,965.43
Mississippi River and common points territory	2,932.90	58,123.66	200.14	2,014.21	3,133.04	60,137.81
Chicago and common points territory	7,495.00	133,151.94	1,476.30	15,230.80	8,971.30	148,382.74
Cincinnati, Detroit, and common points	2,945.47	53,985.11	96.28	1,462.74	3,041.85	55,447.85
Pittsburgh, Buffalo, and common points	3,857.51	53,078.89	10.48	378.29	3,847.99	53,457.18
New York, Boston, and common points	7,803.36	169,648.84	929.29	15,850.65	8,732.65	185,499.49
Total	28,650.04	544,581.20	3,955.43	47,309.30	32,605.47	591,890.50

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900 (see Note)	7,380,798	39,147,697.33
Ratio of freight traffic between Portland and territories specified via Granger to total tons of freight carried by and gross operating revenue of Union Pacific System	0.44%	1.51%

NOTE—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company and the rail and water lines of The Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific Company and Southern Pacific Company.

Traffic between Portland and points on and east of Mo. River.

(3962) The statement marked Sub-division "G" relates to "traffic to and from Portland and Atlantic seaboard, Pittsburgh and Ohio River territories. The showing below includes all traffic between Portland and points on and east of Missouri River. This is for the year ending June 30, 1900. Via Union Pacific is included in sub-division 'F,' which I have read. Q. We won't repeat that. A. Via Rio Grande and Southern Pacific, west bound tons, 1,958; Southern Pacific earnings, $19,192.83. East bound is estimated 774 tons, $1,533.74. Total, 2,732 tons, $20,726.57. The average per month was 228 tons; Southern Pacific earnings $1,727.21. Auditor's statement attached. Owing to destruction of S. P. records, this information was furnished by the D. & R. G. Railroad Company. See A. S. Hughes' letter to J. C. Stubbs, September 9, 1909, and accompanying papers, which are attached as vouchers to sub-division 'E.' The east bound tonnage and earnings were given for six months only. That showing has been doubled to get the above exhibit. The statement testified from by the witness, identified as 'Sub-Division 'G,'' was marked Defendants' Exhibit 50, and is as follows:

DEFENDANTS' EXHIBIT 50.

(Stubbs.)

Lovett's question No. 13.

Sub-Division 'G'.

TRAFFIC

To and from Portland and Atlantic Seaboard, Pittsburgh and Ohio River Territories.

The showing below includes all traffic between Portland and Points on and East of Missouri River.

Year ending June 30, 1900.

Via Union Pacific: (Is included in Answer to "F")

Via Rio Grande and Southern Pacific: W. B. Tons.....	1,958	S. P. Earnings.....	$19,192.83
Estimated: E. B. "	774	" "	1,533.74
Total	2,732	S. P. Earnings.....	1,727.21
Average per month.....Tons..	228	" "	$20,726.57

Authority: Auditor's statements attached. Owing to destruction of S. P. Records this information was furnished by D. & R. G. R. R. Co. See A. S. Hughes' letter to J. C. Stubbs, September 9, 1909, and accompanying papers, which are attached as vouchers to Sub-Division 'E.' The East bound Tonnage and Earnings were given for six months only. That showing has been doubled to get the above exhibit.

(3963)

Statement of freight traffic between Portland, Oregon, and Missouri River and common points territory and points east thereof, via Southern Pacific Company Lines via Ogden and Rio Grande Western Railway, for year ending June 30, 1900.

Westbound		Eastbound		Total	
Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
1,958	19,192.83	774	1,533.74	2,732	20,726.57

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines, for year ending June 30, 1900 (see Note 1).....	12,243,763	63,920,414.22
Ratio of freight traffic between Portland and territory specified, via Ogden and Rio Grande Western Railway, to total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines.....	0.02%	0.03%

NOTE.—1. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System, and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to destruction of records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

2. Owing to destruction by fire of the records of the Southern Pacific Company, the information in respect to business carried via Rio Grande Western Railway was obtained from the Denver & Rio Grande Railroad Company, successor to Rio Grande Western Railway Company. Figures for eastbound traffic were given for six months only and these were doubled for the year.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor
Union Pacific System and Southern Pacific Company.

Hops and wool to the east.

The statement marked Sub-division "H" relates to "Hops and wool to the east, namely, Atlantic seaboard, from Portland to Missouri River and east, for the year ending June 30, 1900. Via Union Pacific, tons 1,290; Union Pacific revenue $6,078.12. Average per month, 107 tons, $581.51. Via Southern Pacific and El Paso, 128 tons; S. P. revenue, $4,456.50. Via Southern Pacific and D. & R. G., 303 tons; Southern Pacific revenue $3,062.79. Total Southern Pacific, 431 tons, revenue $7,519.29. Average per month for the Southern Pacific 36 tons; revenue, $626.61. Total average per month, 143 tons, revenue $1,208.12. The statement just testified from by the witness, identified as Sub-Division 'H,' was marked Defendants' Exhibit 51, and is as follows:

(3964)

DEFENDANTS' EXHIBIT 51.

(Stubbs.)

Lovett's question No. 13.

Sub-Division 'H.'

HOPS AND WOOL TO THE EAST.

(Mainly Atlantic Seaboard.)

From Portland to Missouri River and East.

For Year Ending June 30, 1900.

Via Union Pacific.....Tons..	1,290	U. P. revenue.....		$6,978.12
Average per month..... " ..	107	" "		581.51
Via Sou. Pac. and El Paso ..... " ..	128	S. P. revenue.....		$4,456.50
Via S. P. and D. & R. G. " ..	303	" "		3,062.79
	431			$7,519.29
Average per month.....Tons..	36	Revenue		626.61
Total average per month.Tons..	143	Revenue		$1,208.12

Authority: Auditor's statement attached:

Tonnage and freight revenue on hops and wool traffic from Portland, Oregon, to Missouri River and east thereof, via the Union Pacific System Lines and Southern Pacific Company Lines, for fiscal year ending June 30, 1900.

Commodity	Via Un. Pac. Sys. lines		Via So. Pac. lines via El Paso and New Orleans		Via So. Pac. Co. lines via Ogden and Rio Grande Western Ry.		Total from Portland	
	Tons carried	Un. Pac. Sys. lines freight revenue	Tons carried	So. Pac. lines freight revenue	Tons carried	So. Pac. lines freight revenue	Tons carried	Un. Pac. Sys. and So. Pac. lines freight revenue
Hops	8	151.43	3	94.75	274	2,881.32	285	3,127.50
Wool	1,282	6,826.69	125	4,361.75	29	181.47	1,436	11,369.91
Total	1,290	6,826.69	128	4,456.50	303	3,062.79	1,721	14,497.41

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System lines (see Note 1) for year ending June 30, 1900	7,380,786	39,147,687.33
Total tons of freight carried by and gross operating revenue of Southern Pacific Company lines (see Note 2) for year ending June 30, 1900	12,243,763	63,920,414.22
Ratio of tonnage from Portland via Union Pacific System lines to total tons of freight carried by Union Pacific System lines	0.0184	
Ratio of tonnage from Portland via Southern Pacific Company lines to total tons of freight carried by Southern Pacific Co. lines	0.0044	
Ratio of freight revenue on tonnage from Portland via Union Pacific System lines to gross operating revenue Union Pacific System lines	.....	0.0184
Ratio of freight revenue on tonnage from Portland via Southern Pacific Company lines to gross operating revenue Southern Pacific lines	.....	0.0124

NOTES—1. Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of The Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

Tonnage and freight revenue on hops and wool traffic from Portland, Oregon, to Missouri River and east, etc.—Continued.

(3965)

2. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System, and the lines East of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

3. Owing to destruction by fire of the records of the Southern Pacific Company, the information in regard to business carried via Rio Grande Western was obtained from the Denver & Rio Grande Railroad Company, successor to the Rio Grande Western Railway Company.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

"Q. Have you sub-division 'I' before you? A. I have. MR. SEVERANCE. Do we understand you expect to put Mr. Stebbins on, or not?' MR. DUNNE. Yes. MR. SEVERANCE. Mr. Stubbs personally knew nothing about it, of course. MR. DUNNE. These have been prepared by the Auditor, except as otherwise specified, some of the figures being obtained from the D. & R. G. WITNESS. Sub-Division 'I,' traffic between San Francisco and Montana and Idaho points, including eastern Oregon, Washington and British Columbia, served by Northern Pacific and competed for, so-called, for the service between San Francisco and Portland—— MR. SEVERANCE. The words 'so-called' are not in there, are they? WITNESS. No. MR. SEVERANCE. Well, please put yourself in quotations when you insert anything, will you? WITNESS. I will ask you to put the quotation marks on that. * * * WITNESS. By Southern Pacific and the O. R. & N. Co., for the year 1900. Via Southern Pacific and Northern Pacific, tons 2,402; S. P. earnings $12,837.09; average per month, 200 tons, $1,069.76. Via O. R. & N. Co., tons 17,049; O. R. & N. steamship earnings, $39,238.92. Average per month, 1,421 tons, $3,269.91. Total 19,451 tons, $52,076.01. Average per month, tons 1,621, $4,339.67. Auditor's statements. Owing to destruction of Southern Pacific Company's records, the information in respect to this Company's revenue was obtained from the Northern Pacific Railway Company. The statement testified from by the witness, identified as 'Sub-Division 'I,'' was marked Defendants' Exhibit 52, and is as follows:

Traffic between San Francisco and Montana and Idaho points.

(3966) DEFENDANTS' EXHIBIT 52.

(Stubbs.)

Lovett's question No. 13.

Sub-Division 'I'.

TRAFFIC

Between San Francisco and Montana and Idaho Points (including Eastern Oregon, Washington and British Columbia), served by Northern Pacific and competed for—for the service between San Francisco and Portland—by the Southern Pacific and the O. R. & N. Co.

Traffic between San Francisco and Montana and Idaho points, etc.—Continued.

For the year 1900.

Via S. P. and N. P.	Tons	2,402	S. P. Earnings		$12,837.09
Average per Month	"	200	" "		1,069.76
Via O. R. & N. Co.	"	17,049	O. R. & N. S. S. Earnings		39,238.92
Average per Month	"	1,421	" "		3,269.91
Total		19,451	"		$52,076.01
Average per Month	Tons	1,621	"		4,339.67

Authority: Auditor's statements. Owing to destruction of Sou. Pac. Co.'s records the information in respect to this Company's revenue was obtained from the Northern Pacific Ry. Co.

Tonnage and freight revenue of traffic from and to San Francisco Bay points via Portland, Oregon (not via Huntington or Ogden), to and from points on Northern Pacific Railway east of Pasco, Washington.

Via Southern Pacific Company—Pacific System and Northern Pacific Railway for calendar year 1900

Westbound		Eastbound				Total	
Free competitive points west of eastern terminals		To competitive points in Montana		To competitive points in Washington, Idaho, Oregon and British Columbia			
Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
323	1,587.54	1,634	8,491.46	445	2,758.09	2,402	12,837.09

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Southern Pacific Company lines for year ending June 30, 1900 (see Note 1)	12,243,703	63,920,414.22
Ratio of freight traffic between San Francisco Bay points and points specified to total tons of freight carried by and gross operating revenue of Southern Pacific Company lines	0.02%	0.02%

(3967)

Via The Oregon Railroad & Navigation Company for fiscal year ending June 30, 1900

Between San Francisco and Spokane		Between San Francisco and Pendleton, Athena, Walla Walla, Wallula, Waitsburg, Huntsville, Longs, Dayton, Lewiston, Pullman, Moscow, Connell, Garfield, Farmington		Between San Francisco and points between Harrison and Burke and Mullan		Total	
Tons carried	O. R. & N. steamship revenue	Tons carried	O. R. & N. steamship revenue	Tons carried	O. R. & N. steamship revenue	Tons carried	O. R. & N. steamship revenue
8,184	18,880.78	7,514	17,118.54	1,351	3,319.60	17,049	39,238.92

Tonnage and freight revenue of traffic, etc.—Continued.

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900 (see Note 2)	7,380,796	39,147,697.33
Ratio of freight traffic between San Francisco Bay points and points specified to total tons of freight carried by and gross operating revenue of Union Pacific System..	0.23%	0.10%

NOTES—1. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called), and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

2. Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

3. Owing to destruction by fire of the records of the Southern Pacific Company, the information in respect to business carried via Southern Pacific Company was obtained from the Northern Pacific Railway Company, which carried this traffic from Portland.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

Traffic between Atlantic seaboard and Colorado common points.

The statement marked Sub-division "K" is in two parts and relates to "traffic between Atlantic seaboard territory and Colorado common points, via Southern Pacific and Gulf ports, via Union Pacific, all-rail, and via Union Pacific and South Atlantic ports, for the year ending June 30, 1900. Via Southern Pacific Gulf routes, tons 21,611, revenue $202,173.15. Average per month, 1,801 tons. Revenue $16,847.76. Via Union Pacific, all routes, for October, 1906, and April, 1907, tons 2,451, revenue $32,798.18. Average per month 1,226 tons, $16,399.09. Owing to destruction of records, figures for Union Pacific traffic for 1900 are not available, and figures for October, 1906, and April, 1907, are used, taken from statements introduced by the Government as Exhibits 120 C and 120 D. Authority: For Union Pacific, general auditor Young's statements, May 25, 1909, Exhibits 120 C and 120 D. For Southern Pacific, statement of B. G. Bartholomew, Auditor, etc. * * * (3968) Traffic between Atlantic seaboard territory and Utah common points, via Southern Pacific and Gulf ports, via Union Pacific all-rail, and via Union Pacific and South Atlantic ports, for the year ending June 30, 1900. Via Southern Pacific Gulf routes, tons 1,812; Southern Pacific revenue $24,853.48 Average per month, 151 tons, $2,071.12. Via Union Pacific, all routes, for October, 1906, and April, 1907, tons 9,475; U. P. revenue $95,240.98. Average per month, 4,738 tons, $47,620.49. Owing to destruction of records, figures for Union Pacific traffic for

1900 are not available, and figures for October, 1906, and April, 1907, were used, taken from statement introduced by the Government as Exhibits 120C and 120D. Authority, for Union Pacific, General Auditor Young's statements, May 25, 1909; for Southern Pacific, statement of B. G. Bartholomew, etc. * * *

"MR. SEVERANCE. You say, as to the Southern Pacific, 'Statement of B. G. Bartholomew, Auditor Atlantic Steamship Lines, January 12th, 1910.' Did he have the records of the rail lines between the terminus of the steamship and Fort Worth? MR. DUNNE. Well, we have him here. MR. SEVERANCE. He will be on as a witness? MR. DUNNE. Yes. WITNESS. Of the rail lines? MR SEVERANCE. Yes. WITNESS. I think the manifest is a through manifest, and his record would show. MR. SEVERANCE. He will know about that? WITNESS. Yes. MR. SEVERANCE. We are not objecting to Mr. Stubbs' reading this into the record, on the assumption that you will produce the men that made the figures: but we do object, otherwise, as incompetent. MR. DUNNE. We will develop the figures by the Auditor. MR. SEVERANCE. Simply as a matter of convenience. I don't care anything about it. The statement last testified from by the witness, being identified as sub-division 'K,' two sheets, was marked Defendant's Exhibit 53, and is as follows:

(3969)

DEFENDANTS' EXHIBIT 53.

(Stubbs.)

Sub-Division 'K'

Lovett's question No. 13. (Colorado.)

Traffic between Atlantic Seaboard Territory and Colorado Common Points, via Southern Pacific and Gulf ports, via Union Pacific, all-rail, and via Union Pacific and South Atlantic ports, for year ending June 30, 1900.

Via Southern Pacific Gulf Routes	Tons.	21,611	Revenue	$202,173.15
Average per Month	"	1,801	"	16,847.76
Via Union Pacific—all routes—for October, 1906 and April, 1907	"	2,451	Revenue	32,798.18
Average per Month	"	1,226	"	16,399.09

(Owing to destruction of records, figures for Union Pacific traffic for 1900 are not available, and figures for October, 1906, and April 1907, are used, taken from statements introduced by the Government as Exhibits 120C and 120D.)

Authority: For Union Pacific, General Auditor Young's statements, May 25, 1909, Exhibits 120C and 120D.
For Southern Pacific, statement of B. G. Bartholomew, Auditor, Atlantic Steamship Lines, January 12, 1910.

Traffic between Atlantic seaboard territory and Colorado common points, etc. —Continued.

Lovett's question No. 13. (Utah.)

Sub-Division 'K.'

Traffic between Atlantic Seaboard Territory and Utah Common Points via Southern Pacific and Gulf Ports, via Union Pacific, all-rail, and via Union Pacific and South Atlantic Ports. For Year ending June 30, 1900.

Via Southern Pacific Gulf Routes ..... Tons..	1,812	S. P. Revenue.....	$24,853.48
Average per Month..... " ..	151	" "	2,071.12
Via Union Pacific—all routes—Oct., 1906 and April, 1907..... " ..	9,475	U. P. Revenue.....	95,240.98
Average per Month..... " ..	4,738	" "	47,620.49

(Owing to destruction of records, figures for Union Pacific traffic for 1900 are not available, and figures for October, 1906, and April, 1907, are used, taken from statements introduced by the Government as Exhibits 120C and 120D.)

Authority: For Union Pacific, General Auditor Young's statements, May 25, 1909, Exhibits 120C and 120D.
For Southern Pacific, statement of B. G. Bartholomew, Auditor, Atlantic Steamship Lines, January 12, 1910.

Competitive business to Utah and Colorado.

(3970) With regard to the alleged competitive business as to Utah and Colorado, to which these figures were addressed, "I think I referred to that in my testimony of yesterday. The Southern Pacific did not have any control of this traffic from seaboard to Utah or to Colorado beyond Fort Worth, which is, according to my examination, 270 and 271 miles farther east from these points than Omaha and Kansas City. The competition, if there is such, in the sense of restraining trade is not between the Southern Pacific and the Union Pacific, and I wish to add to my testimony of yesterday this fact: That when the Sunset Gulf route was opened for Colorado business, which was in 1888 or 1889, the Union Pacific owned the line from Denver to Fort Worth; it was then the U. P., Denver and Gulf line; and the line was opened in connection with the Union Pacific road. The Union Pacific road operated that line in connection with the Gulf line, upon equal terms, that is, indifferently as to whether business from the Atlantic seaboard went over that line via Fort Worth or via Omaha or via Kansas City. * * * The rates and divisions in connection with the Southern Pacific's lines from New York to Fort Worth, and, beyond that, the Colorado Southern, have always been applicable to the Union Pacific as a connection, as well as to the Rio Grande as a connection. The business has moved, off and on, by that route.

Recapitulation.

"MR. DUNNE. In connection with these exhibits, Mr. Severance, we will put in evidence a recapitulation which contains, as additional factors, the comparison of the Southern Pacific and Union Pacific revenues and the combined Southern Pacific and Union Pacific

revenues. MR. SEVERANCE. You will do that with Mr. Stebbins? MR. DUNNE. Yes. I will have it marked now. It is really an arithmetical computation. The recapitulation referred to was marked Defendants' Exhibit 54, and is as follows:

DEFENDANTS' EXHIBIT 54.
(Stubbs.)
'X'

SOUTHERN PACIFIC COMPANY

Total operating revenue:
Fiscal year ending June 30, 1900.....$63,920,414.22
Average per month..... 5,326,701.19
Fiscal year ending June 30, 1901..... 77,244,898.18
Average per month..... 6,437,074.85

(3971)

	Southern Pacific: monthly average		Southern Pacific (3) Total revenue: Average per month	Relation of earnings (2) to total revenue (3): percentage (4)
	Tons (1)	Dollars (2)		
A	91	$ 2,066	$6,437,074.85 (1901)	0.032
B	2,156	9,224	" "	0.143
D	2,120	12,196	" "	0.189
E	238	1,680	" "	0.026
F	261	4,680	$5,326,701.19 (1900)	0.088
G	228	1,727	" "	0.032
H	Included in "F"			
I	200	1,070	" "	0.020
J	Unimportant			
K Utah	151	2,071	" "	0.039
K Colo.	1,801	16,848	" "	0.316
				0.885

'Y'

UNION PACIFIC COMPANY

Total operating revenue:
Fiscal year ending June 30, 1900.....$39,147,697.33
Average per month..... 3,262,308.11
Fiscal year ending June 30, 1901..... 43,538,181.01
Average per month..... 3,628,181.75
October, 1906, and April, 1907..... 13,388,623.37
Average per month..... 6,694,311.79

	Union Pacific, monthly average		Union Pacific (3) Total revenue: Sources: Average per month	Relation of earnings (2) to total revenue (3): percentage (4)
	Tons (1)	Dollars (2)		
A	22	$87	$3,628,181.75 (1901)	0.002
B	6,392	18,088	" "	0.499
D	549	3,068	" "	0.084
E	2,295	18,389	" "	0.507
F	2,717	48,324	$3,262,308.11 (1900)	1.511
G	Included in "F"			
H			" "	
I	1,421	3,270	$3,262,308.11 "	0.100
J	Unimportant			
K Utah	4,738	47,620	$6,694,311.79 (1907)	0.712
K Colo.	1,226	16,399	" "	0.245

'Z'

UNION PACIFIC AND SOUTHERN PACIFIC

Total operating revenue:

Fiscal year ending June 30, 1900	$103,068,111.55
Average per month	8,589,009.29
Fiscal year ending June 30, 1901	120,783,079.19
Average per month	10,065,256.60

(3972)

Combined.

	Sou. Pac. and Un. Pac. Monthly average		Sou. Pac. and Un. Pac. (3) Total revenue average per month	Relation of earnings (2) to total revenue (3); percentage (4)
	Tons (1)	Dollars (2)		
A	113	$ 2,153	$10,065,256.60 (1901)	0.021
B	8,548	27,312	" "	0.271
D	2,669	15,264	" "	0.152
E	2,533	20,069	" "	0.199
F	2,978	54,004	8,589,009.30 (1900)	0.628
G	228	1,727	" "	0.020
H			Included in "F"	
I	1,621	4,340	8,589,009.30 (1900)	0.051
J			Unimportant	
Utah	4,889	49,691	" "	0.577
K				
Colo.	3,027	33,247	" "	0.387
				2.570

Previous to the merger Mr. Edmund Hawley was the Assistant General Traffic Manager of the Sunset and S. P. Lines, located in New York, the general representative of the Traffic Department. In 1901 the U. P. did not own the Union Pacific, Denver & Gulf road, afterwards the Colorado Southern, and had not for several years previous, and had no interest at that time in forcing business over that route.

(3973) I don't think it ever had any interest in forcing business over that route. They would get the longer haul, bringing it from the Missouri River. I gave yesterday the various routes, all-rail, via the South Atlantic ports, and via the Gulf, in respect to the distances and showed what I believed the facts would warrant, that when the freight moved from the Atlantic Seaboard towards either Denver or Salt Lake City when carried or delivered by the S. P. and its allied interests at Fort Worth, it was 270 and 271 miles—and against some lines farther—distant from the destination than when delivered to the U. P. at either Omaha or Kansas City. I claim that that is evidence that the competition, if there were competition, was between the lines via the S. P. steamships and the H. & T. C. up to Fort Worth with the lines east of the Missouri River and not with the lines west.

On Utah business S. P. competed with lines east of Missouri River.

(3974) Referring to Mr. Hawley's testimony as follows: "Q. As to that business in Colorado, were you competing with the Union Pacific? A. Certainly. Q. How is that? A. Surely.

Mr. Hawley's testimony as to competition for Utah business.

Q. Now, as to Utah business, Utah common points, were you in competition with the Union Pacific as to them? A. Yes. Q. Did any of your traffic into Utah common points that was brought around through Texas move to Utah by the D. & R. G. and the Rio Grande Western? A. Yes. Q. Most of it did, didn't it? A. Yes sir."

I think it is merely a question of terms; I do not think he properly conceived what the term "competition," in the sense that we are using it here, meant—in the sense that the law uses it,—you may take it as my legal opinion or traffic opinion, as you please. I do not think Mr. Hawley would have made that statement if he had thought 5 minutes as to the real definition of the term. Mr. Hawley is a very able and competent man. Under him the New York agency was actively soliciting business to Colorado by the Gulf Route. The U. P. always solicited business everywhere for its long haul, as every other line. If the solicitation of business by the S. P. by one route, and by the U. P. by another route makes competition, they were in competition, if that itself would make competition. I stated that in my opinion there was no competition between Portland and San Francisco. As to the paper mills, I testified as follows:

Traffic of paper mill.

(3975) "That business which is deducted represents the tonnage to and from the paper mills at Willamette Falls, 15 miles above Portland, on the Willamette River. Those mills are on the west side of the river and away from the reach of the railroad. They are served directly by boats, and we have never been able to take any of that business, in fact have not attempted to do it for many years—local to the steamship line," the O. R. & N.

Mr. Graham's testimony as to paper mill traffic.

My attention was called to the testimony of Captain Graham as follows: "Q. You spoke about the traffic from the paper mills. That is paper in large rolls, is it not? A. Large and small. Q. Do you seek that traffic? (That is, his boat line.) A. No, sir, we don't care for it. Q. Why not? A. Not enough revenue in it. Q. That paper is destined to what points as a rule, that is, this heavy roll paper? A. Mostly San Francisco. Q. Goes to San Francisco by boat routes, does it not—one by your boat line to Portland? A. Boat line to Portland. Q. And the other by the line over to Pulp? A. To Pulp. Q. Just directly across on the west side of the river: and is there loaded on the Southern Pacific and taken down that way? A. Yes, sir. * * * (3976) Q. By the O. R. & N. So the O. R. & N. moves some of it to San Francisco, which goes out by boat to San Francisco? A. Yes. Q. And the Oregon City Paper Mills sends some of it across the river in their own boat, over to Pulp, and that goes down on the Southern Pacific? A. Yes, sir."

With this testimony in view I fully stand on what I said. As to my knowing anything about this matter personally, I know it only as I know the movement of all the traffic, by reports, and am willing to have my statement stand as a statement of fact in opposition to the statement of Mr. Graham, to the best of my

knowledge and belief. I want to stand by that. In reference to there being no competition between the S. P. rail line and the boat line to Portland, I think what I said would convey the idea which I meant to convey, that the advantages of the boat line over the rail line were such that the rail line could not overcome them, and that the competition between the several carriers on the sea route for that business not only made it undesirable but intensified its undesirableness. We did try to get it, we did compete for it, we tried very hard. In the early 90's, after the opening of the Shasta Route, we tried it out, did a great many foolish things, and we had to learn by experience. Yes sir, we tried very hard to get it, and we demonstrated to our satisfaction that it was impossible for us to do it.

San Francisco-Portland traffic not competitive. Rail line unable to overcome advantages of boat line.

(3977) We did not continue to carry business between San Francisco and Portland up to the time of the "merger"—any more before than since—I think some little jags of business would move that way, no doubt about it; when any man would come down and put it on our platform, of course we would take it. What I mean is, that there was no competition for that freight. We had no active solicitation. In other words, we practically, in our parlance, went out of that business, and we went out of it not willingly any more than we would go out of any other business that was profitable. We ran daily freight trains between those cities; I mean to say that we do not solicit the business now and did not then—no different now than then, that is it.

In 1900 and 1901 my understanding of it, my recollection of it, is that we didn't solicit that business. If the men in immediate touch in the solicitation of traffic there testified that that business was solicited, I would not dispute it. If the Portland merchants testified that that business was solicited by the S. P., I might question them about it. I think they might be a little careless about statements of that sort; I think we are all very loose in our statements at times. I do not mean to be, I am trying to be very exact on this thing. I would not attempt to say that that business was not solicited if a large number of gentlemen of repute in Portland, and in San Francisco too, had testified it was. Business moved that way.

(3978) For a time, we made active efforts to get passenger business over the Scenic route of ours, the Shasta route, and we do to-day, but not in the sense of competing for it with the steamship. "I simply want to put this thing before you as I see it, properly; and there isn't any use of trying to twist what I say. You will get all the facts out of me. There isn't any doubt about this fact—that busines can move, passenger business, by steamship, between San Francisco and Portland, and by rail between San Francisco and Portland. There isn't any doubt about that. But each line has its characteristics, and, as a practical matter, there is no substantial competition between those lines. We pay no more attention to-day, and have not for years, to what the steamship lines do in

Passenger traffic between San Francisco and Portland not competitive.

passenger matters, than if there was no steamship line there. The steamship lines, according to my information—my observation, pay no more attention to what we do. That was not true in the beginning; we didn't know as much as we know to-day. We did a great many foolish things. That whole passenger war, there was no possible excuse for it, unless it might be argued that it was good as an advertisement for the Shasta line; no possible excuse for it. If we had known as much then as we know now, it would not have occurred. That is the idea I am trying to convey to you. You might take the boats off or you might take our rail line off, and, so far as the increase or decrease of the traffic to either one or the other is concerned, I do not think it would be noticeable."

There is a route from Portland to San Francisco by the ships and one by our rail line. The ships of the O. R. & N. and now of the San Francisco & Portland Steamship Company are not the only ships, there are loose ships all along carrying passengers; the steam schooners carry passengers; I will not testify as to the extent between Portland and San Francisco, but they did to a very considerable extent between San Francisco and Los Angeles for a time.

(3979) The O. R. & N. boats sailed once in 5 days. We run three through trains a day from San Francisco to Portland, all an engine can pull, and loaded to the guards with people paying fare. There has been practically no competition between the rail line and the ship line. You might just as well say that our steamship line between New York and New Orleans competed with the all-rail route. It is entirely tourist travel, and there is practically no competition in the sense that we use the word, taking business that the other fellow has.

(3980) We advertise the Shasta Route, "the route of a thousand wonders," as a very delightful way to travel from San Francisco to Portland, by folders, magazine advertisements, newspaper advertisements, every way we know how, very expensive, spent $100,000 in one year in advertising that route. I don't think I have ever seen any advertisement of the boat line from San Francisco to Portland—that is trifling you know. "Q. Now, you do that advertising with a view of getting people to travel over the Shasta route, don't you? You don't do it just for fun? A. Creating travel. Q. People have to travel. You want them to go that way? A. We created all the travel we have on that line. Q. Did you? A. Yes, sir; by our advertising. Q. And from whom did you take it? A. We didn't take, we made it; induced the people to go there. Q. No, but I am speaking of travel between San Francisco and Portland. A. We didn't take it. I don't think we have taken any from the steamships. I think they have as much as they ever had, to-day. Q. Of the local business? A. Of business, whatever business there is. Q. You don't do any local business? Do I understand you that you have not taken any passenger business between those places, locally? (3981) A. I think some of it, yes. Q.

Created travel on Shasta route by advertising.

A great deal of it? Most of it is local, isn't it? A. No, sir, not by any means. Q. A vast amount of it is? A. I don't know. I can't tell you as to the proportions.

"Q. Then, as I understand, to sum it up, your position is that passengers can go either way, but that, so far as you know, there is no effort made by your organization or the steamship organization, to take the business away from each other; is that about the substance of it? A. Barring the nonsensical warfare that we had at one time, just as much now as ever. Q. You did have a warfare at one time? A. Yes. You know that. It is in the record. Q. When was that war? A. It was in the nineties some time? Q. Who ran the O. R. & N. at the time of that war? A. The O. R. & N. Steamship Company, I think. Q. Who was the active man at the head of affairs at that time? Was it Mr. McNeill? A. I think it was McNeill; I am not sure whether it was McNeill or Mohler. Q. And at that time when McNeill had that steamship war with you, or that war of rates with you, you put your rates very low, didn't you? A. I believe they went as low as five dollars. Q. And you published a tariff, in which you stated that your rates were forced by the excessive competition of the ocean lines, didn't you? A. Very likely. I don't remember that. Q. The tariff is in the record. A. Then you don't need my statement. Q. Well, you remember it, don't you? A. No, I do not remember it. Q. You remember the fact that you did put your tariff down as an act of competition? A. I have already testified to that—that we put the rate down to five dollars. Q. As an act of competition, to get business? A. You may say so. Q. Well, I ask you to say so. A. I do say so. Q. Yes, that is what I knew. A. At that time. Q. Now, at the present time, as I understand you, there is no competition, and has not been since that war? Do I understand you to mean by that that you make your rates irrespective of the ocean rates? A. Yes."

Rate war.

No competition since rate war.

(3982) Our rates are not affected by the ocean rates. When I use the term "competition" in all this testimony, I am using it in the sense of a competition that is in restraint of trade. If Mr. Jones, S. P. Freight Traffic Manager, testified that whenever Mr. Schwerin, perhaps because of increased expense in operating boats, put up the rates between San Francisco and Portland, the rail rates went up automatically at the same time, he ought to be a better authority than I as to the facts to-day.

"Q. Would the fact that Mr. Luce testified as follows, in a recent case pending before the Interstate Commerce Commission upon this subject, affect your opinion? He was being examined by Mr. Durbrow: 'MR. DURBROW. And I also understand that from Portland south as far as Albany, the Willamette river is navigable, and that in some measure affects the San Francisco-Portland rate. MR. LUCE. Yes. They have made reference to the rates from Portland. The rates from Portland by rail are held down by the Willamette river as far as Albany, 80 miles. When these rates

Testimony of Mr. Luce before Interstate Commerce Commission.

were first placed in effect the competition was quite severe, but now it is not so severe, though at the same time these rates cannot be raised beyond a normal rail rate of what we would charge if the water had not been there, because it is not our policy after we have met the steamer rates locally to advance them. Q. Now, outside of the competition by way of the inland water ways between San Francisco and Portland and Los Angeles, you have other competition, do you? MR LUCE. The competition of the sea from here to Los Angeles and from here to Portland, which is well known.' (This testimony was given in San Francisco.) 'Q. And is that competition so severe as to have had the effect upon the San Francisco-Portland, and San Francisco-Los Angeles rail rates? A. Certainly it has. Q. So that I understand from you that the rates by way of the Southern Pacific Company from San Francisco to Portland, and from San Francisco to Los Angeles, and in the opposite directions, had forced and compelled a rate dictated by the carriers operating on the Pacific Ocean. A. Yes, sir.'

"That is rather an involved question, but that is the way the question is asked, and he said 'Yes, sir.' Now, does the fact that Mr. Luce so testified alter your view that the railroads are in any way affected now by the ocean rates? A. I do not know what Mr. Luce had in his mind. I do not think I have said that the rail rates were in no way affected by the ocean carrier. Q. I think you did. A. Now, wait a moment, please. There is not any question about the general fact that, the ocean being there, the general scale of rates between San Francisco and Portland, as everywhere else where like conditions exist, is much lower than it would be were no ocean there. Now, if that is the kind of competition that you refer to, we are not talking about the same kind of competition. As I said to you, I am talking continually in this testimony with respect to competition that has the effect or might be reasonably supposed by a court or a jury to have the effect of restraining trade."

The steamship service now, between Portland and San Francisco, is I think every 5 days. (3984) The tabulations, defendant's exhibits 45 to 54 inclusive, have been made up by Auditors and are statements purporting to be made with reasonable accuracy of tonnage movements by different routes, and revenue and all that. I think I may have had something to say with regard to what would be a proper estimate. Where the records were destroyed we made estimates; with that exception, the figures are from the Auditor's records, or have been secured by the Auditors from some source. I personally know nothing about the accuracy of those figures, but in some cases I have joined with others in making up what I regard as a fair estimate. You may say that I personally do not know anything about the correctness of the reports that are made to me, but they are my guide in the conducting of the general business of the company that is put in my charge. The men are available who made them up anyway.

"MR DUNNE. In fact we made up statements for you that you put in the record, Mr. Severance. MR. SEVERANCE. Certainly. Mr. Stebbins verified them. MR. DUNNE. We have verified statements for you. MR. SEVERANCE. Those were verified by Mr. Stebbins and I understand he is to go on the stand. MR. DUNNE. Yes. Q. Mr. Stubbs, in reference to the freight business between San Francisco and Portland and the rates applying by rail, you have stated that the proximity of the ocean was itself a factor, as it always is under those circumstances, in the establishment of the rail rates. Let me ask you, in addition to that, if over and above these two steamships of the O. R. & N., with their five days' service, there are other water craft plying upon that highway between San Francisco and Portland? (3985) A. I understand so. I cannot give you what they were, but I think perhaps it is in the record. Q. Now, I will ask you the question whether the operation of freight trains between San Francisco and Portland, and conversely, prior to 1901, and since this foolish rate war that you have spoken of, freight and passenger, whether the operation of the freight train by the rail carrier between San Francisco and Portland made any substantial impression, as a matter of fact, upon the freight business of the steamship companies? MR. SEVERANCE. I object to that as purely speculative. A. It has not.

Effect of proximity of ocean on rate.

"Q. Passing to the passenger business between San Francisco and Portland, I will ask you the question whether you would have advertised the Shasta Route and expended these large amounts of money in giving publicity to that method of carriage for passengers —if you would not have done those very things if the O. R. & N. Company steamboats had never turned a wheel between Portland and San Francisco. MR. SEVERANCE. I object to that as purely speculative. A. We certainly would have done it just as the D. & R. G. did it for its scenic route. Q. In other words, as you said, you were creating traffic for the line? A. That is exactly what we did. Q. Mr. Stubbs, Mr. Severance has read to you some testimony from Mr. Graham about this paper mill on the Willamette River, which he said was given by Mr. Graham in answer to questions by Mr. Cotton; so I suppose Mr. Severance will not object to a few answers by Mr. Graham responsive to questions put by Mr. Severance. I will read them to you and ask you if they express the situation. I am reading from page 2,693 of the printed record—speaking of sixteen years ago, going back as far as that:

Would have advertised Shasta route regardless of boat line.

"'Was the O. R. & N. Company operating boats on the river at that time? A. Yes, sir. Q. What time did they cease? A. About a year and a half ago, above Oregon City. Q. Do they still run to Oregon City? A. They run to the Oregon City locks, to the paper mills. Q. One boat? A. One steamer called the 'Ruth.' Q. Do they handle any traffic now with the exception of the output of that mill? A. Supplies to the mill and the output from the mill. Q. Do they handle it all? A. Yes, sir. They take all the output; we handle a little of the supplies in. Q. You didn't

Testimony of Mr. Graham as to mill traffic.

participate in the output at all. A. No, sir. (3986) Q. How far from Portland is Oregon City? A. Thirteen miles by river. Q. How far by rail? A. Fifteen by Southern Pacific, and a little over fourteen by Oregon Water Power. Q. Oregon Water Power, an electric line? A. Yes, sir. Q. Does the Southern Pacific reach this paper mill? A. No, sir. Q. How far are they from it? A. Right across the river. The paper mills are in the locks and they are inaccessible even to a team. Q. The product can only come in by boat? A. Yes, sir. Is that your understanding of the situation there?"

Outside boats.

I cannot say as to the number of outside steamers and schooners, but we can get them if you want them; I think Mr. Miller has them. (3987) If in 1901 the only other regular boat line, outside of the O. R. & N., was the California & Oregon Coast Steamship Company, referred to by the witness Baumgartner, and they were under agreement to maintain rates made by the O. R. & N., if that was the only boat and those facts were true, it would be a very much neutralized competition. I do not mean to be understood for a moment as saying that that would be the only water craft plying between those two ports; I said, if that was the only line.

Spence.

(3987) LEWIS J. SPENCE.

Traffic representative of S. P. in New York.

I reside at New York and represent the S. P. as General Eastern Freight agent of the rail lines, and General Freight Agent of the Atlantic Steamship Lines. (3988) Since October 7, 1885, have been connected with the S. P. as stenographer, secretary, chief clerk, and eastern freight agent in the office of the General Eastern Agent, and the Assistant General Traffic Manager at New York; and since March 1, 1902, as General Eastern Freight Agent of the S. P. and the P. M., O. & O., and the Japanese Lines; and since February 15, 1906, as General Freight Agent of the Atlantic Steamship Lines of the S. P.—my jurisdiction covering Atlantic Seaboard territory in respect to the S. P. and the Pacific Steamship Lines, and covering also freight traffic between New York and the Gulf ports, New Orleans and Galveston.

Atlantic Seaboard territory defined.

This Atlantic Seaboard territory embraces all territory east of a line from Toronto, Canada, through Buffalo, following the western boundary of New York State, through Pennsylvania, just east of Pittsburg, Wheeling and Charleston, West Virginia, to the southern boundary of Virginia at about Bristol, Tennessee, and north of a line drawn thence east by the southern boundary of Virginia to the Atlantic Ocean. When the Sunset Route was opened in 1883, the steamship service consisted only of a line between New York and New Orleans, or more correctly, Algiers, across the river from New Orleans; Galveston came later.

(3989) The maximum sailings were three a week. Service between New York and Galveston began August 2, 1902, with minimum sailings of 3 a week, 2 steamers being dispatched weekly between New York and Algiers, and 3 weekly between New York

and Galveston, making 5 a week. Since August 2, 1902, when the fleet consisted of 16 steamers, three passenger and freight steamers have been constructed at a cost of about $3,000,000, a lighterage fleet at New York has been acquired and constructed at a cost of half a million dollars and there are now under construction four new freight steamers at a cost of about two and a half million dollars. And since August, 1902, we have established expensive wharves and terminals at Galveston for the accommodation of traffic handled through that port, and within two months we expect to remove to more commodious wharves in New York at an approximate increased rental of 100 per cent. There are now 19 steamers in service. Between New York and New Orleans we have passenger and freight steamers, between New York and Galveston, freight ships exclusively. The ships now in the fleet will take average cargoes of merchandise of from 2,500 to 3,000 tons each. Ocean fleet and service of Sunset.

(3990) Between the Atlantic Seaboard and Mississippi, the east coast of Central America, Louisiana, Arkansas, Texas, Oklahoma, Mexico, New Mexico, Arizona, California, Colorado, Utah, Oregon, Nevada, China, Japan, the S. P. Steamship Line—the Morgan Line—has been engaged in traffic. The U. P. has never engaged in traffic between Atlantic Seaboard territory and Mississippi, the east coast of Central America, Louisiana, Arkansas, Texas, Oklahoma, Mexico, New Mexico, or Arizona, nor can I conceive of any way in which they could. During the fiscal year ending June 30, 1900, 60.46 per cent. of the total east and westbound seaboard business of the Morgan Line was represented by this territory which I have eliminated so far as the U. P. is concerned, and for 1898 the percentage was 60.21. I have been in this Sunset business over 25 years. I have heard recently, never until recently, of the so-called "Portland Route," by way of Portland and the ocean to San Francisco. Traffic limitations of U. P. Never heard of Portland route until recently.

It has been a part of my duty to keep track of the lines engaged in the same business that we are and I never heard of that line being engaged in traffic between Atlantic Seaboard territory and California until recently. The question of wharf delivery at San Francisco would be a very important factor in connection with the practicable or impracticable character of this Portland route.

(3991) In taking freight to a port reached by steamship lines at equal rates from an all-rail line, we are never able to get a substantial share of the traffic because of the convenient facilities for delivery offered by the all-rail lines with their side-tracks, spurs, and delivering depots, usually more than one in a town and convenient to the consignee or shipper. There is considerable traffic from the Seaboard to California, or conversely, that would not stand transportation by the Portland route—for example harnessed pianos from New York—the cheap pianos are harnessed right in the freight car and cannot move by water at all or part water and rail. Take the immense cracker business of the National Biscuit Company, it is put up in such frail form of package that they ship Certain commodities not adapted to water transportation.

exclusively by all-rail routes to enable them to load in the original car and send through to destination. Take earthenware and crockery from Trenton, New Jersey, packed in the cars in straw, not in packages—it cannot be handled by the water and rail route. Those are fair examples.

Puget Sound gateways.

I never knew of any business in a substantial sense going to California territory by the Pacific ocean through the Puget Sound Gateways. There was traffic which moved through Vancouver when they had differential rates into San Francisco, but it was not substantial as compared with the total traffic and the movement absolutely stopped after the differential was withdrawn. (3992) Assuming that the S. P. Lines in California had stopped at the Southern boundary of the State, and that the S. P. had not been in the management of the entire line from Coast to Coast, the Sunset Route in my judgment would never have been able to secure a substantial share of the traffic between Atlantic Seaboard territory and California,—say, that the S. P. short haul had been to Los Angeles or to the Southern boundary of California and its longer haul to Ogden. If the influence of the S. P. on that traffic had been exerted in favor of the Ogden haul, the Sunset route could never have made the progress it made in getting business. The S. P. would naturally have preferred its long haul.

The volume of the Sunset traffic to and from the southwestern territory described by me is what has enabled that line to maintain sufficiently frequent sailings between New York and the Gulf to remain an important factor in the California business. Apart from that southern and southwestern business, and looking to the California business, including Los Angeles and interior points not available to the Portland Route, the California business of itself would not have supported more than one-third of our steamship service in operation between New York and the Gulf. In all the 25 years of my railroad experience I never knew of any business to move to or from California by that Portland route.

California traffic in itself would not support more than one-third of Morgan line business.

Never knew of any business via Portland-San Francisco route.

Blye statements.

(3993) Touching the Blye statements, showing a decline in the westbound tonnage percentages of the Morgan Line from 77.17 in 1895 to 39.6 in 1899, and 38.6 in 1901, those statements cover business from New York City only. These statistics included tonnage from New York City by the Sunset Route and by the Trunk Lines respectively, not only to California but to Nevada, Western Idaho, Oregon, Washington, and British Columbia. The Sunset traffic in which we are substantially engaged, was practically confined to California. There was an enormous growth of traffic in the Northwest, and almost all of it was reflected in the tonnage of the Trunk Lines, which very materially increased their percentages, while the Sunset percentages were not correspondingly increased.

Statements had been furnished of Pacific Coast tonnage for a number of years—they were not begun by me—and after I took charge of the office, succeeding Mr. Hawley, March 1, 1902, I could

see no value in them to us, whatever value they had for the Trunk Lines, because they did not reflect the true situation, the percentages of the Trunk Lines increasing by this expansion of northwestern traffic in which the Sunset did not participate; and the statements appear to me to serve no purpose whatever, and as a practical proposition I simply cut out the clerical work of my office, discontinued the statements entirely of my own initiative and responsibility; in fact I did not report to anybody that I had done so, I just did it.

Increase in Sunset tonnage.

Speaking absolutely, between June 30, 1900, and June 30, 1907, there was an actual increase in the east and westbound tonnage of the Sunset from 204,827 tons for the year 1900, fiscal, to 348,673 tons for the fiscal year ending June 30, 1907, an increase of 143,846 tons, or about 70 per cent., based on actual takings.

Ocean lines to California.

The clipper ship service around Cape Horn from the Atlantic to the Pacific was superseded by steamships through the Straits of Magellan on October 15, 1900. Between the year 1900 and the year 1902, the Panama Railroad Company was giving service between New York and California. (3994) It maintained a service by the Isthmus,—a complete service of its own between the Atlantic and Pacific Coasts, composed of the steamships between New York and Colon operated by the Panama Railroad, the rails of the Panama Railroad across the Isthmus, and steamships chartered and operated by the Panama Railroad between Panama and San Francisco. Between December 15, 1900, and June 11, 1902, the P. M. was not engaged in transcontinental business between the Atlantic and the Pacific Coast. A five year contract between the P. M. and the Panama Railroad expired December 15, 1900, and between that date and June 11, 1902, the Panama Railroad operated its own steamers on both sides of the Isthmus, and the P. M. was out of the business. The P. M. was still engaged in business to and from the west coast of Mexico and Central America, what may be called its local business.

Between Dec. 15, 1900, and June 11, 1902, the Pacific Mail was not engaged in transcontinental business.

American-Hawaiian line

The service by steamships through the Straits of Magellan was inaugurated in 1900, and continued until January 1, 1907, when it was superseded by service by the Isthmus of Tehuantepec—composed of the American-Hawaiian Steamship Line on the Atlantic side, the Tehuantepec Railroad across the Isthmus, and the American Hawaiian Steamship Line on the Pacific side. (3995) As the S. P. agent in New York City, I represent one line from New York to San Francisco, and another line from Ogden to San Francisco; and there is a U. P. agent in New York, maintained there as long as I can remember. Since the stock purchase of February, 1901, there has been a consolidation of agents in some sections, but the separation in New York between the U. P. agent and the S. P. agent has continued ever since the stock purchase. As between the U. P. agent and the S. P. agent in respect to transcontinental business from New York to California, my first duty would be to work preferentially for the long haul. The U. P. agent would be solicit-

Witness represents line, Ogden to San Francisco.

Works preferentially for the long haul.

ing California traffic for the U. P. line to Ogden, and for the S. P. line thence to California.

All rail traffic, New York to California.

I have never known the entire New York business to be attracted to the decks of the Morgan Line ships—a substantial tonnage moves west over the Trunk lines to California (the amount is shown in the record), which would leave the Trunk lines at Chicago or St. Louis, and if it did not move by the Omaha and Ogden gateways it would have to go over the Santa Fe, from Chicago to California, and if it moved by the Rock Island, it would go through the El Paso gateway, and then pass over the rails of the S. P. into California. (3996) The chief duty of the U. P. agents in the Atlantic Seaboard or for that matter of any other agent in what you might call a foreign territory—a territory not reached directly by his own line—is to promote the relations of his company with the connections. The U. P. agencies in Atlantic Seaboard territory serve the purpose of maintaining harmonious relations with their connections—cultivate them, if you please—and the benefits derived therefrom by the U. P. are also derived by the S. P. line from Ogden to California.

Duty of agents.

Of traffic originating on the Trunk Lines and going over the Santa Fe from Chicago, neither U. P. nor S. P. gets any part of the haul. Every pound of business and every dollar of revenue in respect to California business that the U. P. solicits is as well for the S. P. line as for the U. P. The percentage of the total tonnage of the Morgan Line going to California for the fiscal year ending June 30, 1898,—as related to the total business of the Morgan Line --was 37.31 per cent. This includes Nevada business which is very small, trifling—the Nevada business taken by the Sunset line has never amounted to anything. (3997) For the fiscal year ending June 30, 1900, the corresponding Morgan Line percentage was 34.79. These percentages include business to and from.

All the California traffic obtained by U. P. is for the S. P. as well.

Percentage of Morgan line traffic going to California.

Colorado and Utah traffic.

Of the total business to Colorado and Utah originating on and east of the Missouri River, about 22 per cent. originates in Atlantic Seaboard territory. During the calendar year, 1900, the westbound business to Colorado from Atlantic Seaboard territory was divided, all-rail 57 per cent., Atlantic port routes 7 per cent., Gulf routes 36 per cent.—in those days there was comparatively little business by the Atlantic port routes. For the calendar year 1908, the division was, all-rail 41 per cent., Atlantic port routes, 43 per cent., Gulf routes 16 per cent. The figures for Utah for 1900 are not accessible. For the calendar year 1908, the westbound Atlantic Seaboard business to Utah divided, all-rail 45 per cent, Atlantic port routes 30 per cent, Gulf routes 25 per cent, the Atlantic port routes and Gulf routes together representing (3998) about 55 per cent. to Utah, and 59 per cent. in respect to Colorado. For the fiscal year ending June 30, 1898, our tonnage—Morgan Line westbound—for Utah was 1,665 tons, our eastbound tonnage 97 tons, or a total of 1,762, of which the revenue westbound including the Morgan steamers and the rail line New Orleans to Fort Worth was $25,123.70.

and on eastbound $1,393.65, the total to Utah being $26,517.35—for the year. For the fiscal year ending June 30, 1900, our westbound Atlantic Seaboard tonnage to Utah was 1,632 tons, (3999) eastbound 180 tons, total 1,812 tons; westbound revenue, New York to Fort Worth $24,372.91, eastbound $480.57, total $24,853.48.

Tonnage and earnings on Colorado and Utah business unsubstantial.

Although we have not the figures for comparative distribution of percentages among rail routes and broken service lines into Utah for 1900, we have this expression of the tonnage and earnings of the Morgan Line just given for 1900, as well as for 1898—so that the business by that line was very unsubstantial. Our westbound tonnage from Atlantic Seaboard territory to Colorado for the fiscal year ending June 30, 1898, was 4,525 tons, and eastbound 1,384 tons, total 5,909 tons; earnings New York to Fort Worth steamship and rail, westbound, $46,733.24, and eastbound, $9,580.93, total $56,314.17. These figures are for 12 months. The corresponding figures for the year ending June 30, 1900, on westbound tonnage are 14,673 tons, eastbound tonnage 6,938 tons, total 21,611 tons; westbound earnings, steamship and rail, New York to Fort Worth, $166,255.26 and eastbound $35,917.89. Total, $202,173.15—covering the entire period of 12 months.

Union Pacific-Gulf route.

(4000) The U. P. Route in respect to the Gulf consisted and now consists of the S. P. Steamship Line, New York and Galveston, the G. H. & S. A. railroad, Galveston-Houston, the H. & T. C., Houston-Fort Worth, the Colorado & Southern, Fort Worth-Denver, and the U. P., Denver-Utah. The Colorado & Southern is the north and south line in this Gulf business, and was operated by the U. P. prior to the Receivership, prior to 1898, known then as the Union Pacific, Denver & Gulf. The U. P. lost that line through these financial reverses, but prior to the difficulties of the Receivership, the U. P. was operating the Colorado & Southern by the name just mentioned, between Colorado and Fort Worth with rail connections to the Gulf and steamship to New York, and that is precisely what the Union Pacific is doing now. (4001) Instead of being interested in the Colorado & Southern, it is now said that the U. P. is somewhat interested in the S. P. which was the water end of the transaction.

Map showing lines from Seaboard to Colorado and Utah.

I have prepared a map reproducing the lines from the Atlantic Seaboard to Colorado and Utah during the year 1901 as they actually exist, except that for simplicity—where they intersect and cross each other—they are drawn straight, side by side, so that each will show, practically to a scale, in fact, traced as far as possible. The red lines represent the initial part of every differential line to Colorado and Utah—steamship lines, and the blue lines represent the rail connections of the water lines from the ports as well as the all-rail lines from New York and Boston to Colorado and Utah, the South Atlantic port and Gulf port routes being exhibited as they existed in 1901. The Mallory Line, which is shown on that map from New York to Galveston, has been engaged in the

water and rail business from the Seaboard to Colorado and Utah longer than the Morgan line.

Morgan and Mallory lines.

(4002) The Mallory had operated longer than the Morgan Line —a great many years—between the Atlantic Seaboard and the gulf ports, and has been operated uninterruptedly since 1901. In respect to the relative falling off of the percentages on the Sunset line in the taking of the seaboard business to Colorado and Utah since 1901, as I have developed in my figures, the Mallory Line has been similarly affected during the years that followed between 1900 and 1908 or 1909, during that decade—there has been more than a corresponding decrease in the business of the Mallory Line to Colorado and Utah; there has not been anything singular or peculiar about the Morgan Line as distinguished from the Mallory Line in that aspect of the case. I have prepared a diagram of the principal available routes between New York and Boston and San Francisco as they existed during the year 1901.

Decrease in percentage of Colorado and Utah business.

Maps showing principal routes to California.

"It does not represent every conceivable route to California: it represents just what it states—the principal available routes, which means the avenues of traffic which are used daily for the business between the seaboard and California. The green lines represent the railroads operating between New York and Boston on the one hand and San Francisco on the other, with the exception of the dotted green lines which represent the steamship lines which operated and engaged in California business, to the Virginia ports, to Algiers, Louisiana, and to Galveston, Texas, in 1901, and call attention to the fact that the same number of water routes are not shown on this sketch as on this other sketch because it is confined to the routes that were engaged in the California business. It shows, in addition to those indicated by the green lines, additional routes—it states, rather, additional routes, 'A' by American-Hawaiian Steamship Company by Magellan, and 'B' by Panama."

These maps to the extent that they go are correct representations of the available routes on the business specified therein, and these are the various lines having through arrangements.

(4003) These lines form through routes; every line between New York and Buffalo can handle traffic over every line operating west of Chicago, so that the actual routes represented by this map would multiply into thousands. The Atlantic Port routes have rail connections to the distributive territory in question: the Old Dominion line to Virginia ports, and the Mallory Line and the Morgan line to the Gulf ports have rail connections with which they are engaged in the California business. This multiplication of routes applies as well to the map of Utah and Colorado routes as to California routes. I have not undertaken to express that multiplication of routes, it would be an interminable job. I have endeavored to make that diagram as simple as possible, and to represent the avenues of traffic that are used. (These maps are Defendants' Exhibits 55 and 56, and face page 4003 of the record.)

Multiplicity of routes.

For the fiscal year ending June 30, 1900, the westbound tonnage

of the Morgan Line to Portland was 1,372 tons, eastbound from Portland 2,026 tons, total 3,398 tons. This total represented 58-100 of 1 per cent. of the tonnage of the Morgan Line. (4004) For the fiscal year ending June 30, 1898, the corresponding figures are for westbound 3,483 tons, eastbound 1,260 tons, total 4,743 tons; this total representing 9-10 of 1 per cent. of the Morgan Line tonnage. For the year ending June 30, 1900, the westbound earnings to Portland were $31,130.34, eastbound $40,553.07; total $71,683.41 for the full period of 12 months. The gross freight revenue of the S. P. for that fiscal year was $42,851,952. The entire system earnings upon the Sunset traffic between Atlantic Seaboard and Portland represented 16-100 of 1 per cent. of the gross freight earnings of the S. P.

Portland tonnage and revenue via Morgan line.

The Sunset Route never did participate in the inbound Oriental business, it may have carried 50 tons in a year, or something like that, but not any appreciable amount. As to the outbound business the principal transportation facility for the business originating in Atlantic Seaboard territory, excepting during the Japanese War, was the Suez Steamship Lines, and this was true up to and including 1900 and 1901. (4005) The outbound business from the Atlantic Seaboard, of Oriental destination, going by the Sunset, went entirely through San Francisco. For the fiscal year ending June 30, 1900, the tonnage to China and Japan would represent 39-100 of 1 per cent. of the Morgan Line westbound tonnage, and a considerably less per cent. of the combined east and westbound. These fractions get so small that I almost lose them.

Sunset never participated in inbound Oriental business.

Volume of outbound Oriental tonnage.

The earnings upon business between the Atlantic Seaboard and these Oriental destinations via the Sunset Route, for the fiscal year ending June 30, 1900, were $24,998.24, representing 5-100 of 1 per cent. of the gross freight earnings of the S. P. for the same period. Of the gross freight earnings of the S. P. for the fiscal year ending June 30, 1900, the earnings accruing on the total Colorado and Utah business represented 53-100 of 1 per cent., on the Portland business 16-100 of 1 per cent. and on the Oriental business 5-100 of 1 per cent. (4006) Referring to the testimony of complainant's witness White, that in 1900 the Morgan Line had 65 commodity rates lower than the all-rail rates from the Seaboard to California, and that in 1909, or up to date as he expressed it, there were 26 or 29, I have examined the tariff to ascertain if that statement was correct. The figures for the first period were substantially correct, we make it 71 where he made it 65; the figures for the more recent period were for some reason very inaccurate.

Earnings on Oriental business.

Testimony of witness White as to number of commodity rates lower than all-rail rates.

I have compiled it and it can be checked by the transcontinental tariff to which reference has been given, the I. C. C. Number—a list of the actual items that are in effect lower from the Morgan line pier than the all-rail routes from New York to California terminals, and it shows 77 items at the present time. I made it up myself and know it to be correct. It is an abstract of the Tariff.

The paper from which the witness was last testifying was marked Defendants' Exhibit 57 (Spence), (4007) and is as follows:

DEFENDANTS' EXHIBIT 57.

(Spence.)

Rates in effect Jan. 25, 1910, in trans-continental freight bureau west-bound tariff No. 1-J (R. H. Countiss, Agent, I. C. C. No. 904) to California terminals.

Commodities. Rates in cents per 100 lbs.	From —			
	M. L. pier, via Gulf		New York, all-rail	
	L. C. L.	C. L.	L. C. L.	C. L.
Ammonia, sulphate of, in packages, min. wt. 40,000 lbs.	.....	60	.....	.....
Asphaltum, in packages, min. wt. 60,000 lbs.	.....	55	.....	.....
Automobiles, passenger and freight.	6.00	.....	7.00	.....
Barytes, min. wt. 60,000 lbs.	1.25	50	.....	.....
Bones, min. wt. 30,000 lbs.	.....	65	.....	.....
Bottles, wine or beer, and whiskey, brandy and mineral water bottles of similar shape, common flint, green, black or amber, (not including druggists' prescription bottles and bottles of similar shape, or flasks, any style finish); common soda water bottles (not siphon); in bulk, or in boxes, casks, or crates, min. wt. 30,000 lbs.	.....	75	.....	80
Bottles, mineral water, in packages, empty, second-hand, returned, min. wt. 24,000 lbs.	.....	75	.....	.....
Brick (clay products), as follows:				
Common, paving or pressed, ornamental figured, shaped, invoice value not exceeding $5.00 per ton, min wt. 50,000 lbs.	.....	50	.....	.....
Fire brick or fire brick and fire tile of various shapes and fire clay in straight or mixed carloads (but not including tank blocks or retort settings), min. wt. 40,000 lbs.	.....	50	.....	.....
Tile, hollow (including fire clay, wall coping, chimney pipe and flue linings), also conduits, underground, for electric wires, min. wt. 50,000 lbs.	.....	50	.....	.....
Common or pressed (boxed or crated), ornamental figured, (boxed or crated), shaped (boxed or crated), invoice value not exceeding $5 per ton.	1.00	.....	.....	.....
Brick (clay products), fire brick (of common brick shape), and fire clay, boxed or crated.	1.00	.....	.....	.....
Fire brick (of irregular shape), retort settings, (including tank blocks for glass furnaces), and fire-clay linings for grates, stoves, or furnaces, n. o. s., boxed or crated	1.50	.....	.....	.....
Calcium, chloride of, in iron drums, min. wt. 40,000 lbs.	.....	55	.....	.....
Canned goods, n. o. s., viz:				
Fish, fruits (not preserves), meats (including potted or deviled), canned meats with vegetable ingredients, olives, vegetables, beans, peas, ketchup, kraut, baked macaroni-and-cheese, soups, breads and puddings, in tin, glass, or earthenware, packages hermetically sealed, boxed, min. wt. 40,000 lbs.	.....	95	.....	1.00
Canned corn, boxed, straight carloads, min. wt. 40,000 lbs.	.....	90	.....	95
Canned fish, canned clam juice, and canned clam chowder, boxed, min. wt. 40,000 lbs.	.....	90	.....	95
Canned meats or meats in glass, hermetically sealed (including potted or deviled), boxed, straight or mixed carloads, min. wt. 40,000 lbs.	.....	90	.....	95
Canned beans and canned peas, boxed, min. wt. 40,000 lbs.	.....	90	.....	95
Canned tomatoes, boxed, min. wt. 40,000 lbs.	.....	90	.....	95
Canned goods (fermented, i. e., "swell"), returned to packers in original package with original labels	85	.....	.....	.....
Cement, building or paving, n. o. s., in packages, min. wt. 40,000 lbs.	1.00	50	.....	.....
Cement (tar), building or paving, in packages, min. wt. 60,000 lbs.	1.00	60	.....	.....
Cereal and cereal products, viz, brewers' grits, brewers' meal, brewers' cerealine, corn meal, corn chop or chop feed, chopped corn, cracked corn, and hominy, straight or mixed carloads, min. wt. 30,000 lbs.	.....	70	.....	80
Copperas or sulphate of iron, in packages, min. wt. 40,000 lbs.	.....	60	.....	.....
Drums, empty, iron, returned, min. wt. 20,000 lbs.	.....	50	.....	.....
Fertilizer, n. o. s., including dried blood, tankage and phosphate rock, min. wt. 40,000 lbs.	.....	60	.....	.....
Food, poultry, viz, ground meat and bone, alfalfa meal, blood meal, clover meal, gluten feed, gluten meal, cut alfalfa, cut clover, grain screenings, crushed shells, charcoal, and dry whey refuse, in packages, straight or mixed carloads or in mixed carloads with millet seed, in packages, min. wt. 30,000 lbs.	1.25	60	.....	.....

Rates in effect Jan. 25, 1910, in trans-continental freight bureau west-bound tariff No. 1-J—Continued.

Commodities. Rates in cents per 100 lbs.	From—			
	M. L. pier, via Gulf.		New York, all-rail	
(4008)	L. C. L.	C. L.	L. C. L.	L. C.
Gas liquor or ammoniacal liquor, in iron drums, min. wt. 50,000 lbs.	.....	50	.....	.....
Hemp, sisal, istle or ixtle, in bales, min. wt. 24,000 lbs.	.....	60	.....	75
Iron and steel articles, viz:				
Billets, blooms, ingots, muck bar and scrap steel, min. wt. 60,000 lbs.	1.00	60	1.25	65
Pig, min. wt. 60,000 lbs.	1.00	50	.....	.....
Pipe fittings and connections, including traps, cleanout fittings, cocks or valves, wrought, cast or malleable or iron body cocks, valves and pipe connections (the bodies or principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also, wrought iron pipe bends, with or without wrought or cast iron flanges, min. wt. 30,000 lbs.	.....	65	.....	70
Shingle bands, iron or wire, in packages, min. wt. 40,000 lbs.	.....	70	.....	80
Ties, baling, in packages, min. wt. 40,000 lbs.	.....	70	.....	80
Lime, (including hydrated lime), in barrels, boxes, bags, bulk, min. wt. 40,000 lbs.	.....	50	.....	.....
Lime, acetate of, in barrels, boxes, casks, or iron drums, or in sacks, min. wt. 40,000 lbs.	.....	50	.....	.....
Limestone and whiting, ground or lump, in packages, min. wt. 60,000 lbs.	.....	50	.....	.....
Lumber, n. o. s., (including built-up, combined, or veneered wood), except woods of value (i. e., cocobolo, ebony, lignumvitae, and rosewood), min. wt. 40,000 lbs.	.....	75	.....	85
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s. (in boxes or kegs)	.....	.....	.....	.....
Wire (fence), iron or steel, smooth-annealed, plain or galvanized	.....	.....	.....	.....
Barbed, galvanized, or painted	.....	.....	.....	.....
Staples	.....	.....	.....	.....
Wire hoops	.....	.....	.....	.....
Straight or mixed carloads, min. wt. 40,000 lbs.	.....	70	.....	85
Nails, cement-coated, in boxes or kegs, min. wt. 40,000 lbs.	.....	70	.....	85
Oil cake and oil-cake meal, min. wt. 40,000 lbs.	.....	60	.....	.....
Onions and onion sets, in packages; charges must be prepaid or guaranteed, min. wt. 30,000 lbs.	.....	75	.....	.....
Ore, iron, ground, min. wt. 60,000 lbs.	.....	60	.....	.....
Strawboard, n. o. s., in crates or bundles, min. wt. 50,000 lbs.	.....	55	.....	.....
Pebbles, in sacks or barrels, min. wt. 40,000 lbs.	.....	50	.....	.....
Pipe, sewer (clay), and drain tile, min. wt. 30,000 lbs.	.....	65	.....	.....
Pipe, sewer (clay), and drain tile, boxed or crated.	1.00	.....	.....	.....
Plaster, building, in packages, min. wt. 60,000 lbs.	.....	50	.....	.....
Plaster, land, in packages, min. wt. 40,000 lbs.	1.25	60	.....	.....
Rags, n. o. s., including carpet mill sweepings, in packages, min. wt. 40,000 lbs.	.....	60	.....	.....
Railway equipment, viz:				
Cars, narrow gauge, or parts thereof, K. D., loaded on standard gauge cars, min. wt. 30,000 lbs	.....	1.50	.....	.....
Brake shoes, min. wt. 50,000 lbs.	.....	65	.....	.....
Car wheels and axles, min. wt. 40,000 lbs	.....	65	.....	.....
Resin, in barrels, min. wt. 40,000 lbs.	1.00	50	.....	.....
Rice, broken rice, and brewer's rice, in packages, straight carloads, min. wt. 40,000 lbs.	1.10	65	.....	.....
Rice flour, min. wt. 40,000 lbs.	.....	75	.....	.....
Rice polish (rice dust), rice bran, or rice hulls, in packages, straight or mixed carloads, min. wt. 40,000 lbs.	1.10	65	.....	.....
Salt, min. wt. 40,000 lbs.	.....	60	.....	.....
Sand, sand facing, flint sand and fire sand, ground or unground, also granulated slag, min. wt. 60,000 lbs.	.....	50	.....	.....
Sash weights and balance weights for folding beds and lounges; also counterweights; min. wt. 60,000 lbs.	1.00	50	.....	.....
Seeds:				
Alfalfa, beet, clover, grass, hemp, mustard, rape, bird, timothy, millet, and canary, Kaffir corn seed, broomcorn seed, also wheat, corn, popcorn, oats, peas, and beans, flax, garden and sunflower, sorghum, min. wt. 30,000 lbs.	1.45	1.20	1.50	1.25
Seed, flax, whole or ground, in packages, min. wt. 30,000 lbs.	1.45	1.20	1.50	1.25
Sheep dip, liquid, min. wt. 30,000 lbs.	.....	65	.....	75
Pitch and tar, min. wt. 60,000 lbs.	1.00	55	.....	.....

Rates in effect Jan. 25, 1910, in trans-continental freight bureau west-bound tariff No. 1-J—Continued.

Commodities. Rates in cents per 100 lbs.	From— M. L. pier, via Gulf		New York, all-rail	
	L. C. L.	C. L.	L. C. L.	C. L.
Silica (pulverized), or silex, min. wt. 60,000 lbs	.....	50	.....	.....
Soda ash (may be shipped in sacks), soda crystals, caustic soda and hypo-sulphate, hypo-sulphite, nitrate (may be shipped in sacks), silicate (may be shipped in sacks), and (4009) sulphate of soda, sulphite of sodium, and chloride of lime (may be shipped in casks), in kegs, boxes, or iron drums, min. wt. 40,000 lbs.	1.10	55	.....	.....
Staves and headings, rough or finished, and hoops, also wine tanks (K. D.) min. wt. 40,000 lbs.	.....	75	.....	85
NOTE.—Will not apply on iron hoops.				
Stone, rough, sawed, hammered, chiseled or cut to dimension, not polished or lettered, and not including marble, min. wt. 40,000 lbs	.....	55	.....	.....
Tile, roofing, min. wt. 30,000 lbs	.....	70	.....	80
Wall coating and wall finish, dry, n. o. s., in boxes, barrels or casks, min. wt. 40,000 lbs.	.....	65	.....	75
Wire (fence), barbed, including staples, steel stay guards and stretchers, min. wt. 40,000 lbs	.....	70	.....	85
Wire, iron, plain, galvanized, tinned or coppered (including if desired, steel stay guards), min. wt. 40,000 lbs.	.....	70	.....	85
Wire fencing, in rolls (including if desired, staples, steel stay guards, stretchers and wire fence gates), and coarse wire netting for fencing, in packages, min. wt. 30,000 lbs.	.....	80	.....	90
Rails (steel), including mining rails, cross ties (steel), and sawmill track, min. wt. 60,000 lbs. except where length of rails requires two or more cars, in which case the minimum carload weight will be 40,000 lbs. for each car used.	.....	$11.00 per ton 2,240 lbs.	.....	.....
Rail fastenings, viz: angle bars, fish bars, rail joints, rail joint splice bars, base plates, tie plates, track spikes, track bolts, track nuts, nut washers, nut locks, rail braces, rail chairs and steel clip fastenings for steel ties, min. wt. 60,000 lbs.	.....	55	.....	67½
Tin and terne plate (flat as from the mill, not further manufactured) in boxes, min. wt. 40,000 lbs	55	.....	.....	.....

No. of items, 77.
No. of commodities, 79.

Effect of broken service.

There are quite a number of commodities that cannot be moved by broken service. Everything can be moved all-rail, some things cannot be moved by water and rail. The bulk of the westbound traffic out of New York can go boat and rail. The Canadian Pacific movement was not substantial at the differential tariff. I have not looked up the tonnage figures recently, but when the line was in operation we used to get copies of the manifest. (4010) I refer to seaboard territory, know nothing of what they have taken west of the seaboard zone. The traffic in this zone was general in character, and they took about the same classes of commodities as the Morgan Line. The increase in Sunset tonnage to California points from January 30, 1900, to January 30, 1907, ceased after the opening of the Tehuantepec Route, a quite successful competitor of the rail lines and Sunset, and Sunset traffic has fallen off I think in the last few years about 10 per cent. per annum, attributable partly to the American Hawaiian competition and partly to improved service all-rail.

(4011) I only know in a general way of the American Hawaiian tonnage, we don't get their original manifests. It is part of our business to find out if possible the sources of traffic and amount carried by competitors. It is one of the values of an agency to gather information for the management which the agency may use in soliciting business—I should say the information was gathered chiefly for the benefit of the management, it keeps you posted—it would be useful in trying to get business of a corporation whose product could go over the Sunset Route. I would go after the traffic, the ordinary case of a soliciting agent. The chief duty, one of the most important duties of the agent of other than initial lines is to maintain relations with connections.

Soliciting agents.

(4012) At places like New York City, Pittsburgh, Chicago, Cincinnati and other large centers, where traffic originates, the lines other than the initial lines have soliciting agents in the field who personally call on shippers and solicit their traffic, endeavor to get the routing over their lines whatever initial line may take it. I think the agents of a carrier in a foreign territory are expected to promote relations between the shippers and their company, so that shippers will not object to shipping over their lines. To some extent they get their friends among the big shippers, whatever the initial line, to direct its shipments to pass over their lines. If I was representing a line in a foreign territory I should spend most of my time in cultivating my connections—that is my view of it. I know that agents for western lines go to big shippers all the time seeking their business, and I know that they spend a lot of time cultivating their connections—both these things are their duties.

Value of cultivating connections.

(4013) To some extent an agent having business originating west will give some of that business to lines reaching New York and in return get the assistance of the local lines in routing business west. But what I mean by cultivating their connections is this. That there is more of the results of good fellowship between the agents of carriers than between the agents of carriers and the shippers—I can have a friend on the connecting line that will give me more business than half a dozen shippers. We have five soliciting agents in New York for the S. P., and my guess would be that the U. P. have about that number. We work together in New York, the U. P. and ourselves. When I was with Mr. Hawley, the U. P. men solicited business here for the U. P. from shippers, and in endeavoring to route business by the Sunset we would meet the efforts of those men to route business by the U. P.

U. P. and S. P. agencies work together in New York.

(4014) In the early days just after the Sunset Route was opened, Mr. Hawley's estimate of the percentage of the total movement from New York proper to California by the Sunset Route, 85 per cent., that it ran as high as that at times, would accord with my recollection. I couldn't estimate it in 1900, that is, taking out all the other business. It was a substantial business, we have expressed it here in tons in 1900 and I think in cash.

Sunset earnings on east and westbound California business.

(4015) The Sunset earnings for the year ending June 30, 1900, on westbound California business represents $2,406,915.05, eastbound $1,658,568.15; total $4,065,483.20. These are the Auditor's figures, from the Auditor of the Steamship Line. For 1898 the corresponding figures are westbound $1,752,411.90, eastbound $1,687,030.25; total $3,439,442.15. Since 1900 the development of California has been very marked, I think traffic between New York and California has increased enormously—I have no means of estimating the percentage of increase, I know in a general way of the development. The citrus fruit movement of California eastbound does not come by steamship. (4016) But ordinary California products do, dried fruits and canned goods, everything of that sort, but not any vegetable movement, such as celery and that sort of thing.

Panama road and Pacific Mail.

From December, 1900, down to 1902, the Panama road had its own ships on the Pacific side, up to the time they made the new contract with the P. M., June 11, 1902. I don't think, during the time they operated their own ships a much larger traffic moved by the Panama route than since, unless it would be that they chartered ships capable of carrying certain classes of traffic that the P. M. ships were not large enough to carry, or something of that sort, but I don't remember that a great deal more business went then by the Panama Route than now. We meet the Panama Route in competition here, the Panama Railroad agency, find it rather active.

Time of shipments, all routes.

(4017) I never represented the P. M. Isthmus Line. It does not maintain an agency here for that business, but depends upon the Panama people. The usual Sunset time, New York to San Francisco, trains running on time, is 15 to 16 days; the Panama time about 35 days. It may be nearer 45, I don't think it is about 30 days on the other side of the Isthmus—our information on the subject is what we get from intercourse with people who use the line, and my understanding from them is that it is about 35 days. The Tehuantepec time is about 25 days. The all-rail time is about the same as the Sunset, 16 or 17 days, making better time very often—I am trying to give an average; I don't think they make slower time a good deal of the time. The time is about the same by all of the lines—there are only two routes practically into California, the Southern Pacific and the Santa Fe, and their time is about the same.

If witness cannot get business via Sunset, he solicits it via Ogden.

(4018) Up to two months ago, the San Pedro was a delivering line into California, and the time into Southern California is about the same by the San Pedro, Sunset, and Santa Fe. Business does also move over the Ogden Route to Southern California, but I don't think they can make as good time, it is a pretty long line. I route business via the Sunset, not aiding the Ogden route as against the Sunset, representing the S. P. only; and if we can't get the Southern California business via the Sunset I usually try to get it via El Paso; in other words I have got to use a route that can compete with the Santa Fe.

The Sunset makes 3 or 4 days better time into Los Angeles than the Ogden route. San Francisco time as between the Ogden route and the Santa Fe is about the same. The Ogden line is not able to go down south and meet the Santa Fe time—I think that stands to reason. In 1898, the Sunset carried from all the Seaboard territory 37.31 per cent. of the California and Nevada business—I mean that percentage was the percentage of the total business of the Sunset route; that is something over a third of the whole Sunset business found origin or destination in California and Nevada.

Sunset faster to Los Angeles.

(4019) In 1900 it was 34.79 per cent. Under the method of doing business at that time we had to absorb the rail rate into the New York pier, what we call the local rate. Under the published tariffs of to-day they are published in the tariff. It is on a percentage basis. Generally speaking, the rate from the Seaboard to California by Sunset, is the same as all rail with these exceptions—from the actual point of origin to California. Whether you absorb it out of the rate or call it a division with the originating line does not make any difference so far as the total rate is concerned; it is absorbing somebody's local. We stopped doing that when we had to issue joint tariffs under the Hepburn law, but it amounts to the same thing so far as the integrity of the through rate is concerned.

Sunset rate same as all-rail rate.

Twenty-two per cent. represents the entire percentage of the Colorado-Utah traffic originating in Atlantic Seaboard territory; 78 per cent. originates west of Buffalo and Pittsburgh and up to the Missouri River. In 1900, of the westbound business 57 per cent. went all-rail into Colorado, 7 per cent. South Atlantic ports, and 36 per cent. Gulf routes. (4020) We have not the percentages for Utah for 1900, the Utah tonnage was not compiled in 1900, there was no Bureau to compile it; we have our own records, of our own Auditor, but not the comparative records. The Utah business, South Atlantic and all-rail, was not compiled by a Bureau until later as to all lines; hence we cannot give it for 1900.

Colorado-Utah traffic.

The revenue we got from business by the Gulf Route in 1908, our actual business as compared with 1900 is considerably less; there is more movement by the South Atlantic ports and the U. P. and other lines, and the Gulf tonnage has decreased, actual movement as well as percentages; not only the movement by the Morgan Line, but the movement by the Mallory Line; that is to say the entire movement by the Gulf Route has materially decreased. (4021) The Mallory Line decreased more than we did. I have no figures for the Mallory line preceding 1902, but in 1902, the Mallory tonnage to Colorado was 7,812 tons, in 1908, 2,412 tons. To Utah in 1902, 4,884 tons, and in 1908, 1,374 tons The Mallory Line operates into Colorado over the Santa Fe through from Galveston; over the M. K. & T. to Fort Worth in connection with the Colorado Southern and with the Rock Island; and via the International Great Northern from Galveston to Fort Worth in connection with the Colorado Southern and Rock Island.

Movement by Gulf routes has decreased.

Mallory line.

To Utah their traffic naturally follows either the Colorado Midland and the Rio Grande Western, or the D. & R. G. either through Colorado Springs or Pueblo. The Mallory Line is an independent line not affiliated with any railroad, now a constituent part of the Atlantic, Gulf & West Indies Steamship Company, and it interchanges business with all-rail lines, interchanging with us at Galveston. It is not affiliated with any through line to the Pacific Coast; it takes Pacific Coast business in connection with the Santa Fe. They have not of late years moved any considerable quantity that way. At the time Blye's statistics were made there was perhaps as high as 2 or 3 per cent. by the Mallory Line; (4022) they really have not been much of a factor in California business. I might say there, that the traffic upon which they would chiefly engage in California would be commodities where the same rates were made of course from the Mallory Line pier as from the Morgan Line pier.

Revenue on traffic to Utah and Colorado.

The total revenue, Morgan Line to Utah, as I testified, for the year ending June 30, 1898, east and westbound, was $26,517.35; for the year ending June 30, 1900, for Colorado, $56,314.17. The Utah business has fallen off.

(4023) I do not say it has fallen off in 1906; I said it had fallen off now. I think we can compile the revenue each year. I said the Colorado business had fallen off, but that was in the last two or three years. In 1906-7, according to Mr. Stebbins' figures, our Colorado business as compared with 1898 was as $150,000 to $56,000, and the Utah business as $100,000 to $26,000. The falling off has been in the last two or three years.

Improvement in service via South Atlantic ports.

(4024) There has been a material improvement in the service of the South Atlantic port routes, resulting in the division of the traffic, between the all-rail and Atlantic ports and the Gulf—in the earliest division about 7 per cent. by Atlantic routes, and 36 per cent. by the Gulf, and in the latest 43 per cent. by the Atlantic, and 16 per cent. Gulf. I speak of through service through Norfolk, Newport News and Savannah. It is about a thousand miles farther by rail from Norfolk to Salt Lake than from Galveston. Our ships take 6 days to Galveston. Our best time to Utah is 16 or 17 days; but they make to South Atlantic ports as good as 12 or 13. The time to California all-rail is about 16 days.

Time.

(4025) The running time from New York to Norfolk by ship is 20 hours. They can make better time than by the Gulf route even though they had a thousand miles more rail haul. The ships' time to Savannah is about 48 hours, and they make quicker time to Utah than we can by the Gulf. They make 14 up to 16 days. The Savannah business to-day is I think worked to Colorado points over the U. P., Kansas City or Omaha. As to Norfolk, there is an active route now by the Old Dominion and the Seaboard Air Line through Birmingham, and the Frisco & Rock Island to Denver, and then the U. P. or the Rio Grande. The Kanawha Despatch Line is the Chesapeake & Ohio from Newport News, one of the Old Dominion fast freight lines.

Earnings on Colorado business for 1900.

(4026) In 1900 the Sunset Colorado earnings east and westbound were $202,173.15, increasing from $56,000 in 1898. Defendants' Exhibits 58 and 59 are here offered in evidence as follows:.

(4027) DEFENDANTS' EXHIBIT 58.

(Spence.)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to System lines by territories as shown below for fiscal year ending June 30, 1898.

	Tons	Per cent.	Ship revenue	Rail revenue	Total system revenue	Per cent.
NORTH BOUND.						
Mississippi						
La. & Cen. Am	51,837	19.04	221,192.23	7,271.20	228,463.43	08.30
Texas	88,496	32.50	272,833.14	224,055.87	496,889.01	18.05
Ark. & Okla	531	00.19	2,097.15	4,017.80	6,114.95	00.22
Mexico	1,048	00.38	2,908.47	4,292.00	7,200.47	00.26
N. M. & Ariz.	19,492	07.16	70,483.94	219,904.16	290,388.10	10.55
Missouri River Territory						
Total	161,404	59,27	569,514.93	459,541.03	1,029,055.96	37.38
California	108,039	39.67	295,230.19	1,391,800.06	1,687,030.25	61.29
Colorado	1,384	00.51	5,437.85	4,143.08	9,580.93	00.35
Utah	97	00.04	781.80	611.85	1,393.65	00.05
Portland	1,260	00.46	4,012.58	18,916.47	22,929.05	00.84
China & Japan	145	00.05	442.57	2,086.41	2,528.98	00.09
Grand total	272,329	100.00	875,419.92	1,877,098.90	2,752,518.82	100.00
SOUTH BOUND.						
Mississippi	1,690	00.67	11,915.45		11,915.45	00.40
La. & Cen. Am.	59,574	23.64	375,895.64	33,396.32	409,290.96	13.64
Texas	80,606	31.98	280,799.61	288,566.92	569,366.53	18.97
Ark. & Okla.	175	00.07	792.33	80.59	872.92	00.03
Mexico	9,294	03.69	32,973.43	20,880.42	53,853.85	01.79
N. M. & Ariz.	1,781	00.71	15,759.51	54,800.90	70,560.41	02.35
Missouri River Territory	1,218	00.48	3,247.05	68.48	3,315.53	00.11
Total	154,338	61.24	721,382.02	397,793.63	1,119,175.65	37.29
California	87,597	34.76	306,697.89	1,445,714.01	1,752,411.90	58.38
Colorado	4,525	01.80	27,483.47	19,249.77	46,733.24	01.56
Utah	1,665	00.66	13,146.61	11,976.89	25,123.70	00.84
Portland	3,483	01.38	8,534.39	40,233.58	48,767.97	01.62
China and Japan	412	00.16	1,626.92	7,669.76	9,296.68	00.31
Grand Total	252,020	100.00	1,078,871.50	1,922,637.64	3,001,509.14	100.00
TOTAL						
Mississippi	1,690	00.32	11,915.45		11,915.45	00.21
La. & Cen. Am.	111,411	21.25	597,086.87	40,667.52	637,754.39	11.08
Texas	169,102	32.25	553,632.75	512,622.79	1,066,255.54	18.53
Ark. & Okla	706	00.13	2,889.48	4,098.39	6,987.87	00.12
Mexico	10,342	01.97	35,881.90	25,172.42	61,054.32	01.06
N. M. & Ariz.	21,273	04.06	86,243.45	274,705.06	360,948.51	06.27
Missouri River Territory	1,218	00.23	3,247.05	68.48	3,315.53	00.06
Total	315,742	60.21	1,290,896.95	857,334.66	2,148,231.61	37.33
California	195,636	37.31	601,928.08	2,837,514.07	3,439,442.15	59.77
Colorado	5,909	01.13	32,921.32	23,392.85	56,314.17	00.98
Utah	1,762	00.34	13,928.61	12,588.74	26,517.35	00.46
Portland	4,743	00.90	12,546.97	59,150.05	71,697.02	01.25
China & Japan	557	00.11	2,069.49	9,756.17	11,825.66	00.21
Grand total	524,249	100.00	1,954,291.42	3,799,736.54	5,754,027.96	100.00

AUDITOR'S OFFICE,
New York, N. Y., Jan. 12th, 1910.
(Sgd) B. G. BARTHOLOMEW,
Auditor.

(4028)

DEFENDANTS' EXHIBIT 59.

Defendants' Exhibit 59 is as follows:

(Spence.)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to System lines by territories as shown below for fiscal year ending June 30th, 1900.

	Tons	Per cent.	Ship revenue	Rail revenue	Total system revenue.	%
NORTH BOUND.						
Mississippi.						
La. & Cen. Am	85,431	27.85	367,436.83	61,971.67	429,408.50	14.01
Texas	67,968	22.15	299,827.57	158,117.65	457,945.22	14.94
Ark. & Okla	26	00.01	120.08	88.48	208.56	00.01
Mexico	6,151	02.00	18,894.82	10,102.98	28,997.80	00.95
N. M. & Ariz.	29,428	09.59	90,817.84	321,689.32	412,507.16	13.46
Missouri River Territory						
Total	189,004	61.60	777,097.14	551,970.10	1,329,067.24	43.37
California	108,655	35.42	290,249.42	1,368,318.73	1,658,568.15	54.11
Colorado	6,938	02.26	20,411.08	15,506.81	35,917.89	01.17
Utah	180	00.06	269.59	210.98	480.57	00.02
Portland	2,026	00.66	7,096.78	33,456.29	40,553.07	01.32
China & Japan	7		36.46	171.86	208.32	00.01
Grand total.	306,810	100.00	1,095,160.47	1,969,634.77	3,064,795.24	100.00
SOUTH BOUND.						
Mississippi.	3,047	01.08	16,534.38		16,534.38	00.38
La. & Cen. Am.	74,588	26.46	510,565.62	12,180.11	522,745.73	12.21
Texas	67,569	23.97	498,072.70	325,279.30	823,352.00	19.24
Ark. & Okla.	508	00.18	2,806.77	1,481.18	4,287.95	00.10
Mexico	16,984	06.03	65,870.35	44,418.07	110,688.42	02.60
N. M. & Ariz.	3,473	01.23	42,348.88	102,975.04	145,323.92	03.39
Missouri River Territory.	774	00.27	2,344.80	1,604.18	3,948.98	00.09
Total	166,943	59.22	1,138,543.50	488,337.88	1,626,881.38	38.01
California	96,172	34.12	421,210.13	1,985,704.92	2,406,915.05	56.23
Colorado	14,673	05.21	94,391.13	71,864.13	166,255.26	03.88
Utah	1,632	00.58	13,093.22	11,279.69	24,372.91	00.57
Portland	1,372	00.48	5,417.81	25,682.53	31,130.34	00.73
China and Japan	1,098	00.39	4,338.24	20,451.68	24,789.92	00.58
Grand Total.	281,890	100.00	1,677,024.03	2,603,320.83	4,280,344.86	100.00
TOTAL						
Mississippi.	3,047	00.52	16,534.38		16,534.38	00.23
La. & Cen. Am.	160,019	27.18	878,002.45	74,151.78	952,154.23	12.96
Texas	135,537	23.02	797,900.27	483,396.95	1,281,297.22	17.45
Ark. & Okla	534	00.09	2,926.85	1,569.66	4,496.51	00.06
Mexico	23,135	03.93	84,765.17	54,921.05	139,686.22	01.90
N. M. & Ariz.	32,901	05.59	133,166.72	424,664.36	557,831.08	07.59
Missouri River Territory.	774	00.13	2,344.80	1,604.18	3,948.98	00.05
Total	355,947	60.46	1,915,640.64	1,040,307.98	2,955,948.62	40.24
California	204,827	34.79	711,459.55	3,354,023.65	4,065,483.20	55.35
Colorado	21,611	03.67	114,802.21	87,370.94	202,173.15	02.75
Utah	1,812	00.31	13,362.81	11,490.67	24,853.46	00.34
Portland	3,398	00.58	12,544.59	59,138.82	71,683.41	00.98
China & Japan	1,105	00.19	4,374.70	20,623.54	24,998.24	00.34
Grand total.	588,700	100.00	2,772,184.50	4,572,955.60	7,345,140.10	100.00

AUDITOR'S OFFICE,
New York, N. Y., Jan. 12th, 1910.
(Sgd) B. G. BARTHOLOMEW,
Auditor.

(4029) I gave some statistics on Portland business. They were taken from this exhibit. For the year ending June 30, 1900, the total tonnage Sunset to Portland east and westbound was 3,398 tons, earnings $71,683.41, including business from the whole Atlantic Seaboard west. This does not include the business in the Willamette Valley, the hop business or anything but what went into or came out of Portland. The Willamette Valley is a great hop region. There is nothing in those figures except Portland traffic, destination or origin. I think hops went into Portland, and dried fruit went in there for process, and all that is in this statement. I understand that hops were taken into Portland on our line and shipped back over our line.

Sunset tonnage, Portland business.

(4030) We have hops in the Portland traffic, I know that to be true. I do not know that there was a large volume of hops originating in the Willamette Valley at towns along the river like Salem, Albany and Corvallis, and going Sunset to New York. I know our share of it was small, and it is not included in that statement if it did not go into Portland, as any other local traffic that didn't come into Portland proper, fruit or anything of that sort would not be included. This statement includes salmon taken from the Columbia River packing houses and brought into Portland. We never had any traffic by Sunset routed from New York to Columbia River towns down the river passing through Portland where it was competitive with the O. R. & N. river boats.

Hops.

(4031) This statement made up by the Auditor covered only traffic which came out of or went into Portland, waybilled there. If freight was waybilled from a station in the Valley on the line in Oregon on that side of the river which is not the through line, and the cars were switched around through and went through the Portland yard, I believe that freight would be included in this statement.

(4032) I called for a statement of the Portland traffic which consists of everything that went in and out of Portland, shown by the waybills. If traffic was waybilled at valley stations competitive with the O. R. & N. river boats, it did not move through Portland—if it did, it was not so waybilled. I have been to Portland and have seen traffic handled there. These figures are not from my own knowledge but I get them from the Auditor and it is represented by me to include all business into and out of Portland, nothing more, nothing less. Business up the Willamette Valley, competitive with the O. R. & N. boats, I do not know anything about. The testimony I have given is the figures submitted in the Auditor's statement, and he would have to testify as to the source from which he got his information, how he made them up or anything of that kind.

Statement does not cover Willamette Valley traffic.

(4033) This statement does not purport on Portland business to include business moving all-rail to territory west of the Atlantic Seaboard, like Cincinnati and St. Louis, or from that territory to Portland, or by way of El Paso unless it moved via New York. I am giving the figures for such business as moved to Portland,

steamer and rail from New York, not all-rail from that territory, nor all-rail from Portland east. I stated that the U. P. never engaged in traffic between Atlantic Seaboard territory and Mississippi, the east Coast of Central America, Louisiana, Arkansas, Texas, Oklahoma, Mexico, New Mexico and Arizona.

Takes majority of New York-New Orleans traffic.

(4034) The U. P. might have been in business originating on the Pacific Coast and moving to Texas points or Louisiana and Mississippi—I did not testify that it was not. As compared with the all-rail takings from New York for New Orleans, we take the great majority of the traffic; we have no industry tracks for the steamship line, but we have a very large differential rate to New Orleans. While the Sunset Route carries a large amount of traffic eastbound to New York City at equal rates with the rail line, we have a lighterage plant whereby we make deliveries around New York Harbor the same as the Trunk Lines—why, the industries in New York must be all deliverable by lighter.

Difference in terminal conditions—New York and San Francisco.

(4035) The conditions at San Francisco are different. Rail delivery in San Francisco would be an actual track delivery. There was nobody capable of making track delivery in New York except one line. All the all-rail freight that is secured against the Sunset at an equality of rates is deliverable by lighter. San Francisco is a large wholesaling town. The boat line might secure business of a firm located as conveniently to the wharf of the boat line as to the depot of the rail lines if there was no track connection. We recently acquired and constructed a lighterage plant of our own in New York; we had it performed by contract before.

Wool.

We moved comparatively little wool from Nevada-Utah points Sunset; from Utah points none; from Western Nevada, I think there may be some. Boston is the great wool center. We have a rate by the Sunset Route in the tariff—I think so—from Corinne, Utah, by Sacramento. As to why we keep it in the tariff if we don't move any business over it, I don't know, I didn't put it in. It has been renewed.

(4036) The business from Eastern Nevada wouldn't come around by Sacramento. As to why we have the tariff—we haven't to any extent. I said we carried a small share of this traffic; I didn't make the tariff. This statement that I have been asked about is a statement that the Auditor prepared for me in the regular course of business, exactly as he would prepare any other statement. I could not carry those things in my mind, nor could any other man. The Auditor is here.

Munroe.

(4037) JOHN A. MUNROE, (2).

Freight Traffic Manager of Union Pacific.

Freight Traffic Manager of the U. P. Witness states character and extent of his railroad experience. He was connected with the U. P. during the entire period of its receivership. Witness is asked to explain why the 32 hours train between Council Bluffs and Ogden was put into service during the year 1897.

"That train at that time was known as the Portland Special, and was inaugurated by the receivers of the Union Pacific as one of the results of a controversy, quite severe in character, which was obtaining at that time as between the receivers and the Oregon Short Line. The principal question of difference was this: Prior to the receivership, which took effect on October 13, 1893, the Oregon Short Line was a part of what was known as the Union Pacific system. When the receivership occurred, the jurisdiction of the five receivers extended over the Union Pacific, Oregon Short Line, and the Oregon Railroad & Navigation lines. In 1897, about March 17, as I recall it, the Oregon Short Line was taken out of the hands of receivers and operated thereafter by its own company. During the receivership, and prior thereto, its traffic was substantially exclusive to the Union Pacific via the Granger route; and in the division of earnings a constructive mileage allowance obtained under (4038) which the Oregon Short Line received 1¾ miles for one as their pro rata of the revenue. The receivers stated that there had been some criticism by the court on that allowance, as being unjust to the Union Pacific proper property and excessive as to the Oregon Short Line. Immediately after the Oregon Short Line Company was taken out of the receivership, they served notice on the Union Pacific receivers that they must have a larger division of revenue, and coupled with it the statement of their intention to open the Ogden and the Provo gateways.

Reasons for 32 hour train—"Portland Special."

"Q. To whom? A. To the Rio Grande and their eastern connections. The receivers felt that, having been criticised as they had been, they would not be justified in accepting a smaller unit of revenue for Union Pacific on a less volume of traffic than formerly they received on the greater and therefore they declined the Oregon Short Line proposition. As the result of that there was a good deal of feeling and a good deal of contention. And the Union Pacific, in order to lift its Portland traffic from the Oregon Short Line's, undertook to handle it via Ogden in connection with the Shasta route of the Southern Pacific, realizing, as they did (the Shasta route being so much longer.) * * * About 650 miles, I would say, approximately that, may be a little more—that they would have to give an accelerated service to Ogden; and the order was made effective almost instantaneously by giving instructions to the operating department to run this freight train on approximately passenger schedule, which, as I recall it, at that time was 32 hours and 40 minutes, Council Bluffs to Ogden. That train was put on, and ran three times a week. Its consist was about 22 cars. And it was operated, I would say, 60 or 90 days; and it was discontinued by reason of the settlement of the differences between the Oregon Short Line people and the receivers." It was not regarded as a practical service and I do not think it was, nor could it possibly have been made permanent. It was put on as an emergency matter, and everybody regarded it as extraordinary and exceptional and

Service lasted 60 to 90 days.

Train was a war measure.

justified only by an emergency, and as temporary in character. It was a war measure.

Prior to the receivership, October 13, 1893, the jurisdiction of witness was general over the O. S. L. and O. R. & N. lines as well as the U. P. proper. During the receivership it continued over these lines as long as the five receivers were in charge. The O. R. & N. went (4039) under the hands of a separate receiver on July 4, 1894, but the O. S. L. remained under the receivers until, witness thought, March 17, 1897. Witness' connection with the Traffic Department of the O. R. & N. ceased when a separate receiver was appointed. Witness' connection with the O. R. & N. and O. S. L. went back to 1887, possibly 1886. While witness was connected with the Traffic Department of those allied lines, practically no business for San Francisco was ever routed or handled via Portland and the boat line from Portland down, that is, from points on the U. P. and east thereof. Once in a while a shipment moved that way; but it was so spasmodic as to justify him in saying none moved that way.

Witness' connection with O. R. & N.

No San Francisco business routed via Portland.

The U. P. officers—and they changed quite frequently about those years—considered very carefully the question of opening the Portland gateway, so-called, for the handling of San Francisco traffic; and the conclusion always reached was, that it would be an unprofitable move for the U. P., hence it was not opened. A serious objection to the route was the length of the line. "Portland is substantially the same distance from Omaha as San Francisco is. The sailings from Portland south, one in about every five days, enabled continuous service only when by happenstance the train might make direct connection with the ship. On the great bulk of the freight, there would be a several days' delay at Portland. The service south from Portland would have to be also added. And the combination, we felt, would virtually drive away rather than increase our takings. Furthermore, we recognize that San Francisco business was practically all that would be available to that route. We were not unmindful of the fact that water did extend to Sacramento. But when we went by water to Sacramento, our service was longer than to San Francisco, and we were competing with a correspondingly shorter rail service. As to Stockton, we never considered very much that the business justified anything of that kind. So all of our conclusions were that it was a San Francisco proposition, practically, pure and simple. And even (4040) after we should get to San Francisco, we would be handicapped to the extent of delays in moving the freight from the pier to the warehouses, especially when the same were located upon rails of the Southern Pacific and served directly by that company. The Southern Pacific was the only connection we had for our California business at that time; and the value of our California business was very much greater on other than San Francisco than on San Francisco proper business. We also bore in mind that we had quite a movement of perishable freight that under no circumstances could be successfully handled via Portland. Then we also tried to view the matter from the standpoint

Consideration of route by U. P. officials.

Reasons for refusal to use Portland route.

of the Southern Pacific as well as ourselves, and we felt that any move we might make along those lines would be regarded as a hostile one by the Southern Pacific, and that they would naturally retaliate, and that they were in a position to do this very successfully, and could and would, we believed, make the experiment a very costly one for the Union Pacific. Those were the reasons which appealed to us then, and which would to-day; coupled with this; that the service via Portland, being necessarily inferior, the competitors of the Union Pacific, notably those operating via Kansas City and Albuquerque (the Santa Fe System), those in territory nearer to us (notably the C. B. & Q. and the D. & R. G.) via Ogden and Southern Pacific, would be able to also profit by our experiments. So it was a knife that would cut both ways."

The divisions as between the S. P. and U. P. were on a basis as originally established. They were not unjustly excessive as far as the S. P. was concerned, and there seemed to be no necessity of swinging a club so long as there was no injustice to be removed, and the U. P. was satisfied with the divisions. The route to San Francisco via Portland was a club which, if swung, might prove a boomerang and cost more than it was worth. The U. P. was satisfied it could do no San Francisco business via Portland, except on a differential basis. Such a basis would be unprofitable. Any basis it might put in via Portland would be duplicated by its competitors through Ogden, and "that simply would be the means as it were, of committing suicide with our own revenue; and we recognized that we were trying to use a tool that was not sharp enough to do the (4041) business; that we were handicapped geographically, and that there was nothing we could do via that round about broken-service gateway that would really prove a money-making proposition to our company." The use of that route would have caused the S. P. to use its influence to deflect business from U. P. rails to the D. & R. G. and connections. It would have very largely affected the traffic of the U. P. and would have diminished its revenues far beyond any profit which could have been realized by the use of the line via Portland.

The use of the Portland route would be the means of committing suicide.

In the year 1888, or possibly 1889, the U. P. people consolidated a number of the railroad corporations which it owned, forming the Union Pacific, Denver & Gulf. This line (including among others that witness described, the line from Denver to Fort Worth) was operated by the U. P. until the receivership, and thereafter from October 13, 1893, to December 18, 1893, when a separate receiver was appointed. Since that time the U. P. has had nothing to do with the management of that property, except that they purchased that portion of it extending from Julesburg, Colo., to La Salle.

Union Pacific, Denver and Gulf.

The present Colorado & Southern System is the successor company of the U. P. D. & G. (4042) In 1888 or 1889 the U. P. established a through route from the Atlantic seaboard to Colorado and Utah common points via its line to Fort Worth and the S. P. interests south thereof. The U. P. interests practically were the

U. P. water and rail route to Colorado and Utah via the Gulf.

first to open that line. The constituent members of that route were the Southern Pacific Steamship Lines from New York to New Orleans; then the rails of their Atlantic system to Fort Worth; then the U. P. D. & G. to Denver, and the U. P. from Denver via Cheyenne to Ogden, and the O. S. L. rails from Ogden south to Salt Lake City. This was the first through route inaugurated for the purpose of carrying seaboard business to Colorado and Utah common points via the Gulf ports. The through rates for this route from New York were based on 80 per cent. of the New York-Chicago canal and lake rates plus locals west of Chicago; that basis was effective for several years, and until after the receivership. Under that basis the Gulf lines had a differential of 43 cents per hundred, first-class, grading from that down. After the Trumbull receivership, the question was resurrected and that was modified to a 39 cent scale, which still obtains, both as to Colorado and Utah common points. This through route still continues, but the U. P. proper had no interest in the revenue south of Denver, subsequent to the Trumbull receivership; but it did cooperate in the same through line as it does to-day, to the Utah common points.

First Gulf route.

Rate basis.

U. P.'s three gateways—Council Bluffs, Kansas City and Fort Worth.

(4043) At the time the Colorado & Southern was controlled by the U. P., it worked this seaboard traffic through Council Bluffs, Kansas City and Fort Worth. Its principal gateway was Council Bluffs. It had had a very good interchange via Kansas City. The new line gave them another gateway at Fort Worth. The Council Bluffs gateway was the one preferred by the U. P. because it represented a greater net return, although the policy of the U. P. then was, and is now, to offer the various kinds of transportation it has to sell, to the various patrons seeking purchase. The Kansas City gateway was preferred to the Fort Worth gateway, because it offered more net returns for the service rendered. If the business could not be obtained through Council Bluffs or Kansas City, it would be taken via Fort Worth, and the company would be very glad to get it. "While we had that preference, I do not think we ever announced it openly to our patrons. We generally felt our way, and found out what they wanted, and endeavored to sell them the kind of goods they were seeking." The U. P. also worked certain business via the South Atlantic ports to points in Colorado and Utah.

(4044) It has always had more or less traffic in connection with the South Atlantic ports—principally less, until about 1905; then the more active working of the South Atlantic port gateways commenced, and has been actively worked from that day to this. In the spring of 1901, the extent of the traffic the U. P. received through the South Atlantic ports was very small. At that time practically all the water and rail seaboard traffic moved by the Gulf ports. The Kanawha Despatch route was the principal South Atlantic port route at that time. It used the Old Dominion Steamship Company from New York to Newport News, and Chesapeake & Ohio and connections from there west. The reason why the U. P.

U. P.'s route via South Atlantic ports.

more actively worked for the business via South Atlantic ports after 1905, were as follows: From the year 1893 to 1898 the conditions all over the country were very bad commercially. Every merchant was seeking to reduce his expenses and increase his earnings, in every possible way. The differentials, therefore, appealed then more strongly than ever before, and witness noticed a material deflection of traffic theretofore moving all-rail, to the water lines, and felt that it was high time to get busy and work a water line.

(4045) At that time the Ocean Steamship Company, running between New York and Savannah, and the Georgia Railroad from Savannah to Birmingham made direct connection with the Frisco from Birmingham to Kansas City, "and with our line to Denver, we thought we could develop quite a traffic." The Frisco people promised to cooperate in the establishment of such a route, notwithstanding their very close relations with the Rock Island, and agreed that the U. P. should have their undivided support west of Kansas City. "On that basis we got together and worked very hard, and built up a very nice tonnage." That was in 1905 and 1906.

U. P.-Frisco alliance.

"After we had gotten it going pretty well, the Frisco people underwent a change of heart and notified us that their relations with the Rock Island were such that they would have to work preferentially with the Rock Island as against the Union Pacific; would have to operate their through package cars Rock Island and not Union Pacific; would be glad to handle anything we might give them, as far as Kansas City, and give it to us there, handling it in their Kansas City car. That convinced us that we could not afford to have a half-hearted partner, and that it meant the breaking up of the line; and we so accepted that situation, and cast about and did make new alliances, and were successful in transferring a nice lot of our business from the old to the new line thereby created." They did not take out, or threaten to take out, the through rates which existed between New York and Utah and Colorado common points via this route, nor did they refuse or threaten to refuse to handle the business over their lines. They said they would be very glad indeed to handle the U. P.'s business, but that the latter could not expect any particular support from them. That was the idea conveyed—that they intended to work preferentially in the future, with the Rock Island.

Frisco withdrew and new line formed.

(4046) Not desiring a partner that was more interested in the Rock Island than the U. P., the U. P. transferred its efforts from the so-called Savannah-Frisco Line to the Cumberland Gap Despatch, which consisted of steamship service from New York to Norfolk, and the Norfolk & Western and its connections to Kansas City; U. P. beyond. That line is still in existence. Conditions have also changed somewhat as to the Savannah line, and the U. P. is getting some business from that line now, but working through links other than the Frisco between Birmingham and Kansas City.

Cumberland Gap Despatch.

Carriers participating in transcontinental traffic.

(4047) Witness identifies Trans-Continental Freight Bureau Westbound Tariff No. 1-J, issued October 15th, 1909. It gives a list of participating carriers, 473 in number, all of which are engaged in transcontinental traffic; practically the same railroads were engaged in transcontinental traffic in the spring of 1901. (4048-4061) Defendant's Exhibit 60—giving first eight pages of the Transcontinental Freight Bureau tariff referred to, and a list of all participating carriers. (4062) There are hundreds of different through routes between Atlantic seaboard points and eastern territory on the one hand and Pacific coast points on the other, over which traffic actually moves. Witness describes a number of typical through routes—first, between New York and San Francisco—(a) New York Central, Lake Shore, C. & N. W., U. P. and S. P. (b) The Pennsylvania, A. T. & S. F. (c) Baltimore & Ohio, C. B. & Q., D. & R. G., and S. P.—second, between New York and Portland, Oregon—(a) Erie, C. M. & St. P., U. P., O. S. L., O. R. & N. (b) Baltimore and Ohio, C. B. & Q., N. P.—third, between Boston and Kansas City—(a) Boston & Maine, West Shore and the Wabash (b) Boston & Albany, New York Central, Michigan Central, Chicago & Alton—fourth, between New Orleans and St. Paul—(a) Illinois Central and C. M. & St. P. via Chicago (b) L. & N., Big Four, C. & N. W., and C. St. P. M. & O. "Those are simply typical illustrations of routes that could be formed all over the country, of various roads connecting each with the other."

Through routes designated.

In a general way all the lines which reach Chicago from the West form through routes with all the lines which reach Chicago from the east. On traffic going through to New York, Philadelphia or Baltimore, Union Pacific exchanges traffic on the east with all the lines operating between Chicago and the Mississippi River, on the one hand, and the Missouri River on the other; and they in turn, with all the lines operating east of the Mississippi River. "So we have more or less traffic with all the railroads in the country, participating in transcontinental tariffs." At Kansas City the U. P. exchanges business with the Missouri River, Mississippi River and Chicago lines, such as the Alton, Missouri Pacific, Wabash, and Santa Fe.

All roads make connections with all other roads, to form through routes.

(4063) And those roads in turn with the Big Four, Pennsylvania and Baltimore & Ohio, and the lines operating via Chicago or Illinois junctions. As a matter of fact all the railroads in the United States make connections with practically all other railroads in the United States for the purpose of forming through routes for the transportation of freight and passengers. The El Paso & Southwestern and the Delaware & Hudson River railroads form links in a through route extending from Boston to El Paso; the lines constituting that through route being the Boston & Maine, Delaware & Hudson, the Erie, the Rock Island, and the El Paso & Southwestern. The Colorado Midland forms a link in through routes between the Atlantic and Pacific in connection with all railroads; Grand Junction, Colorado, and west on the one hand, and Colorado

Springs and east on the other. The Philadelphia & Reading and the Colorado Midland are links in the same through route; so are the Boston & Albany and the Chicago & Alton.

(4064) The Colorado & Southern and the Pere Marquette. Most of the lines which witness has described as making up these through routes are east of the Missouri River. There are comparatively few of them west of the Missouri River. Up to the River, and particularly up to Chicago and the Mississippi, there are a great number of lines that participate in the through business. The lines that deliver traffic at the Pacific Ocean are the Canadian Pacific, G. N., N. P., recently the St. Paul, the O. R. & N., the S. P., Santa Fe and San Pedro. The rates set forth in the tariff, Exhibit 60, are called bureau rates. They are largely made by conference at stated periods, at which practically all lines interested are invited to be present. As a matter of fact, the rates are made by the lines (4065) west of Chicago very largely. In the case of rates to California, the S. P. is recognized as of controlling force in rates from New York, and the Atchison in rates from Chicago. The divisions of revenues west of Chicago are such that the Chicago lines feel, as a rule, that their interests are well taken care of by the lines that are interested in the greater revenue. The divisions are 15 per cent. east and 85 per cent. west of Missouri River. The lines east of the River are satisfied that those west of the Missouri will not put in unremunerative rates when they have such a large percentage.

Divisions east and west of Missouri River.

Witness endeavors to represent the U. P. at meetings of the Trans-Continental Bureau, but when he cannot be present he usually sends one of his assistants. The San Pedro is usually represented by Mr. Sloane, the General Freight Agent, sometimes by Mr. Wann, General Traffic Manager. It would be the exception when they would give the U. P. their proxy. The trans-continental rates are the same to Los Angeles over the U. P. and San Pedro lines that they are over the U. P. and S. P. Both lines participate in that business. The San Pedro has no rates into San Francisco. It forms no part of a line into that city.

Rate meetings.

(4066) The San Pedro is the U. P.'s preferential route for southern California traffic, both east and westbound. Witness has solicited business personally in Los Angeles, and the S. P. organization in that territory is seeking the same traffic that witness in connection with the San Pedro. has solicited there. (4067) The traffic which witness was personally soliciting was the vegetable shipments, all of which had origin upon S. P. rails, and which were covered by a joint rate, "and we were not soliciting it, in that sense, against the Southern Pacific, because they were partners in the chain which I was seeking to have favored."

San Pedro preferred by U. P. for So. California.

S. P. a partner on vegetable traffic.

Witness was of the opinion that on that particular traffic, the S. P. was a partner regardless of revenue received by it, because they joined in the through rates and divisions. "It is true that the Southern Pacific service from the celery fields to Los Angeles is comparatively short; by that, I mean something less, we will say, than

50 miles. That may appear to you as a switching charge. It would not so (4068) appear to me. In the division of the revenue, the Southern Pacific received a percentage proportion of the total revenue accruing west of the Missouri River, which pays them for the service they render, and would not be viewed as a switching charge, as we interpret it."

Division of rate.

Witness' recollection is that the S. P. received 20 per cent. of the line revenue west of the Missouri River, and the remainder subdivides between the U. P. and the San Pedro. As to business local to Los Angeles, it is customary to add a switching charge to the Los Angeles rate, which follows the freight when going to industrial tracks, not team tracks. "The custom there differs from that obtaining in some other parts of the country. That excess is not absorbed." Witness remembers a meeting he attended about the 2nd of August,

Understanding as to Southern California traffic.

1905, at San Francisco, at which representatives of the San Pedro, O. S. L., S. P., and U. P. were present, at which a memorandum was made of an understanding as to the handling of southern California business.

(4069) Witness is not sure about the second conference held on the 27th of January, 1906, with reference to switching charges in Los Angeles. He knew about it in a general way. The bases originally referred to were modified or changed subsequently. At the first conference there was a percentage allowance, and in the second an arbitrary one. Witness is handed a copy of a memorandum which he thinks is substantially correct.

"This is the memorandum of understanding had at San Francisco, August 2, 1905, and among other things it provides that on freight traffic between all points on or via the various west of Missouri connections and the San Pedro Company, including Utah common points served by the San Pedro Company, and points on Southern Pacific and California south of Santa Barbara and Mojave and west of Banning, all inclusive, divisions west of Missouri River will be as follows: Southern Pacific industrial tracks in Los Angeles 12½ per cent. San Pedro Company and connections 87½ per cent. of Los Angeles rate; all other points in California south of Santa Barbara, Mojave and west of Banning, Southern Pacific 25 per cent., San Pedro and connections 75 per cent. of Los Angeles rates."

Modification of understanding.

Witness' attention is called to modification of the agreement and states that he thinks it is correct, but that there is another modification that the Complainant's counsel evidently has not seen. "My understanding is (that the other modification was) a reduction of the Southern Pacific per cents. from 25 to 20 and the entire abolition of the 12½ per cent. to cover the Southern Pacific switching service in Los Angeles." (4070) Witness thinks Mr. Luce is better qualified to testify as to the last modification than he is. The paper which was handed to the witness was marked Complainant's Exhibit 210, and is offered in evidence by counsel for the Government as part of the cross-examination of Mr. Munroe. It is set out on pages 4070 to 4076, inclusive.

(4076) The divisions on transcontinental traffic routed through Ogden, 54 per cent. to the U. P. and 46 per cent. to the S. P., on San Francisco business, had always been satisfactory to U. P. (4077) If rates were put down to San Francisco via Portland, it would cause a break in the rates all along the line—the cut would be met by all the other lines. All lines would suffer from such an act, but the loss of revenue would obtain so far as the U. P. was concerned if the rates were not cut, because the S. P. would deflect the traffic. (4078) The line from Denver to Fort Worth was not built by the U. P. U. P. interests built the other lines which formed the component parts of the whole U. P., Denver & Gulf. U. P. has never owned or controlled that line since December, 1893. Since that date the interest of the U. P. on business from New York common points was entirely by the Missouri River. The U. P. had a line via Galveston with the M. K. & T. and Junction City, but it was a small factor,—hardly worthy of recognition. It is a fair statement that after the U. P. lost the control of the Colorado Southern it worked its Utah and common points business through the Missouri River. The Southern Pacific worked theirs by the Gulf.

Division of rates on traffic via Ogden.

Fort Worth line.

(4079) "My answer refers especially to Colorado, because the Union Pacific was part and parcel and an active member of the through line via the Gulf and Denver to the Utah common points—always has been and is today. Q. But Mr. Hawley testified that the bulk of the movement to Utah common points, that the Southern Pacific participated in, went by the Denver & Rio Grande, previous to the merger. A. There were times when that was undoubtedly true. We always participated in that business, to a greater or less extent. Q. But your interest was to get the long haul from the Missouri River, of course? A. That is our traffic interest, but we have always worked a great deal with that Gulf route, and are doing it today." The San Pedro was not in operation in 1901. It was first put in operation in May, 1905. In the spring of 1901, and prior thereto, the S. P. was practically the exclusive connection of the U. P. for California business. That road afforded it practically the only entrance which it had to California. The S. P. dominated the rate situation on business from the Atlantic seaboard to California points; because they had their own line under one common control and (4080) management from New York to San Francisco and were able to take action without conference with any partners. The extent of the divisions of the lines west of the Missouri River had nothing to do with their power over the situation.

U. P. still a part of Gulf and Denver through line to Utah.

Always worked with Gulf. route.

S. P. dominated rates from Atlantic Seaboard.

The competitive lines from southern California, which witness had in mind in giving his testimony, were first, the Santa Fe, second, the S. P. line via El Paso and its connections at that point, third, the San Pedro in connection with the D. & R. G. (4081) The San Pedro and U. P. also formed a through line. In determining whether the route to San Francisco via Portland and the boat line down was a satisfactory one or not, "the question of our having unsatisfactory relations with the Southern Pacific never arose at all. The only

Competitive lines from southern California.

Roundabout Shasta route not successful.

point that influenced us was that we could not make a success of that roundabout route, and our view was subsequently confirmed by our later experience in trying to operate the all-rail line from Omaha via the Shasta route to Portland; and, if we could not make that a success on all-rail service, we could hardly expect to make broken service in the opposite direction a success." If the U. P. could have made more revenue and made the route pay via Portland and the San Francisco line, it would have worked business that way regardless of its relations with the S. P. "If we could have made it a money-making proposition for the Union Pacific, we would have worked it instantly and actively." It was not a practicable route. It was one that would lose the U. P. money and therefore it would not open it. (4082) The Sunset Route was carrying at times, according to the testimony here, 80 or 85 per cent. of the business from New York pier to San Francisco. If the U. P. had cut that rate by Portland and thereby caused a cut all along the line, the S. P., through its enormous tonnage over the Sunset Route, would have suffered in revenue to the extent of that cut.

Would have used Portland route if it were profitable.

Portland route stronger weapon against U. P. than S. P.

(4083) The Portland route "was a strong weapon against the Southern Pacific, but a stronger one against the Union Pacific, for this reason: That the total volume of the New York business handled by the Sunset was very much less than the volume of the business from other territory open to the Ogden route; so that the result would have been, while we might have injured the Southern Pacific some, we would have injured ourselves more. Q. It was something of a weapon, however; in fact, you say it was a strong weapon? A. Why, it was a weapon in the same sense that a razor in your hand would enable you to suicide if you wished to do so. Q. Is that the only way in which a—— A. In my judgment, that is the only way in which the weapon could have been effective. It would have killed us. Q. Wouldn't it have injured the Southern Pacific at the same time? If I take a razor and kill myself it doesn't hurt you, except as you are a friend of mine and do not like to see me do it A. You must not ask me before you do it, then. Q That is it exactly; that is what I wanted to develop. A. I was the fellow that was holding the razor."

Portland route was a weapon for self destruction.

Rate war would have been disastrous to both.

(4084) If the transcontinental rates were cut, it would have been a cut on all the rates from east of the Missouri River to the coast, and the result would have been if the U. P. and S. P. got into a rate war, that both would have suffered very severely. Witness does not think that the Sunset Route was a competitor of the U. P. at Ogden. He thinks that the matter of competitive routes is to be decided upon considerations of ordinary reason and common sense. That is the way the U. P. has tried to conduct itself in respect to the Portland gateway and other things. It was viewed simply as a business proposition—whether the U. P. could or could not afford to engage in it. Assume hypothetically that the U. P. owned a railroad beginning at Omaha and extending through Ogden to San Francisco and extending from San Francisco down to Los Angeles, and had

built a cut-off from Salt Lake to Los Angeles, witness would not regard that as the development of two competitive routes.

(4085) Witness thinks there is a tariff in effect on wool from Corinne, Utah, to Boston via Sunset Route. It has been in effect so long that it has become a dead letter. "Everybody knows, everybody familiar with the wool traffic in that section, that the Sacramento route cuts no figure whatsoever, and has not for years, on any wool from any point in Utah to any point in the Atlantic seaboard. Now, we have traffic departments, tariff departments; we have inheritances in the way of rate bases, and unless something was said to the contrary, a tariff once in effect is reestablished from time to time, but in actual movement the tariff amounts to nothing and we pay no attention to it. Q. Years ago traffic did move that way, did it not, and was competed for actively as between the Union Pacific interests and the Southern Pacific? A. Why, I don't think there was any material movement of wool traffic that way; there may have been an occasional shipment, but—— Q. Now, do you know anything about it? A. I do know something about it because we have always had a very respectable eastbound wool traffic from that section, and I cannot recall a case where we were ever influenced in any of our actions by any rate via Sacramento on any Utah wool. Q. How about northern Nevada and southern Idaho? A. I don't think that any rate made on Nevada wool by the Southern Pacific ever had any material effect upon wool from opposite points on the Oregon Short Line, but on that question I am not as well prepared to testify as some others here who have been in direct touch with it; but all the reports made to me indicate that it never has amounted to more than talk, out there at Salt Lake. Q. Now, Mr. Munroe, of course that is a sarcastic remark—talk at Salt Lake. A. It is like a good many other things out there in the West, Mr. Severance. There seems to have been an optical illusion come over a great many, and that is supplemented by a lot of exaggerated talk. (4086) You think you are getting a tremendous result, but you analyze it and you will be surprised how little there is left. * * *

Sacramento route not a factor as to Utah wool traffic.

S. P. rates on Nevada wool never had any effect on O. S. L. wool traffic.

"Q. Now, you don't attempt to contradict the testimony of the gentlemen who testified at Salt Lake City with reference to the efforts that were formerly made to induce the shearing of sheep on the line of the Southern Pacific, on the one hand, and the Short Line on the other, so as to get the transportation of those sheep, do you? You don't know whether it is true or not, do you? A. I do not believe the truth of the statements. I think the parties making them were under a misapprehension, according to the best information I have been able to get."

Does not believe correctness of Salt Lake testimony on wool traffic.

Samson had plenty of power; and exercised that power in pulling the temple down. He killed his enemies and took his own life. As I take it, counsel are trying to have the U. P. perform the Samson act with reference to the Portland gateway.

Trying to make U. P. emulate example of Samson.

Kruttschnitt.

(4087) JULIUS KRUTTSCHNITT (2).

I am Vice-President of the U. P. and of the Southern Pacific and Director of Maintenance and Operation. "I am a vice-president of each company and director of maintenance and operation; in other words I am vice-president in charge of operating and construction. * * * I began in the engineering department in 1878, having charge of construction of what are now the Southern Pacific lines in Louisiana. After those lines were completed I had charge of their maintenance and after that of their operation until 1885, when I was made assistant to the general manager of the Southern Pacific lines east of El Paso. I continued in that capacity until 1889, I think, when I was made general manager of those lines, and there had charge, as now, of operation and construction and maintenance. In 1895 I was made general manager of the entire Southern Pacific system, both east and west of El Paso; and in 1901, when Mr. Harriman was made president of the Southern Pacific, I was appointed assistant to the president, and continued in that capacity, with the same general duties that I have defined, until 1904, when I was made director of maintenance and operation of both the Southern Pacific and the Union Pacific systems, the title of vice-president having been added as to the Union Pacific recently and as to the Southern Pacific some time in the late '90s—I have forgotten just what year."

His railroad experience.

Between 1901 and the present time, with respect to the policy and practice of the U. P. and S. P. Systems, in respect to the improvement and betterment of the physical properties and operating conditions—"to put it as briefly as possible, when recommendations would go up to president and board for improvement in maintenance and operating conditions or for the construction of new lines, the first question generally asked of me was whether the device or plan recommended was absolutely the best that could be gotten. That seemed to be the criterion. When answered in the affirmative, I can hardly recall an instance where permission was not given to make the improvement. (4088) In consequence of that policy, both systems are today in the highest state of efficiency. * * *

The criterion for betterments was, whether they were the best that could be gotten.

Both systems today in the highest state of efficiency.

"Starting with the Union Pacific, a great deal of the work of reducing grades, eliminating curves, and rebuilding the Union Pacific was begun prior to 1901, though some of it was still unfinished in 1904, and we have done a great deal since that, since my connection with it began; but at the time my connection began with the Union Pacific a great deal of the reconstructoin work had been completed, the grades had been reduced, the line straightened out, a great deal of it ballasted with ballast of a very high character, and a great deal of new equipment added, old locomotives repaired, old rolling stock repaired, and new substituted. The work on the Southern Pacific both prior to and subsequent to 1901 was entirely in my hands, and subsequent to 1901 the same policy of eliminating grades and curves, ballasting the road, laying with heavy rail, adding to the equip-

Rebuilding the U. P.

Rebuilding of S. P. entirely in hands of witness.

ment, expanding terminals, building new side tracks, new water stations, and all the instrumentalities of transportation, was very vigorously pushed, very much in the same way that the work had already been done on the Union Pacific. * * *

Physical condition of S. P. prior to 1901.

"Prior to 1901 the Southern Pacific was deficient in equipment, both passenger and freight, was short of locomotives; a great deal of the mileage of the system was laid with rails that were too light for the traffic being conducted over them, being generally from 60 and 62 lbs. down. The properties were maintained in as good and safe condition as such shortage of equipment and lightness of rail permitted. * * * The principal changes (after 1901) were the placing of new equipment orders. We bought more freight cars, more passenger cars, more locomotives, and the greatest change was made in getting out the light rails. Another item of importance was the ballasting, reduction of grades and curves."

Principal changes.

Charts showing increased cost of labor and operation.

Respecting the cost of labor and the increased cost of operation from that point of view, I have prepared in graphic form two charts for the U. P. and S. P., showing the comparative wages paid employes in the years 1897 and 1908. (4089) These "being copies of charts that I have gotten up on other occasions, and that accounting for the selection of the year 1897. The data for preparing these charts were taken from returns sent in to me specially by the managing officers. The charts cover employes in train service, agents and operators; in other words, those employes with whom we have and have had for a number of years contracts for rates of pay. I have supplemented the charts with a typewritten statement, taken from our return to the Interstate Commerce Commission, giving the comparative compensations of certain employes, such as maintenance of way employes and the shop employes, appearing on these charts."

I have aimed to cover substantially all employes charted, and uncharted. "On the Union Pacific it covers 29,500 employes, and on the Southern Pacific a little over 50,000; in other words, practically 80,000, which, I suppose, at that time would take in 90 per cent. of all the employes. * * * What I call the contract classes of labor, which are train men, agents and operators, on the Union Pacific it shows an increase of 20 per cent. and on the Southern Pacific 25 per cent. The average of all classes on both roads, lump, is about 17 per cent. increase. * * * For maintenance of way employes it would be 10 per cent. increase, and those figures, being taken from the Interstate Commerce Commission reports, are between the years 1901 and 1909. Prior to 1901 they were made up on a different basis. The increase of the maintenance of equipment or shop employes is 17 per cent. * * * Of all classes, on both systems, 17 per cent."

Per cent of increase.

Chart showing increased cost of material on U. P.

These charts marked Defendants' Exhibits 61, 62 and 63 appear—61 at page 4090 of the record and 61, 62 and 63 facing that page. (4090) "I have charted in a similar way, for the Union Pacific system, the comparative prices paid for material used in

operation in 1908 and 1897. That shows the principal commodities used by the railroad, the relative prices in those two years, and the percentage of increase. The authority for most of the prices is the price actually paid by the company in those years, and as to one or two, marked with an asterisk, the prices given by the United States Department of Commerce and Labor. On the typewritten statement attached to the chart are given a number of comparative prices for the same years, taken from Bulletin 81 of the United States Department of (4091) Commerce and Labor. Those prices are, of course, for the entire country; those on the chart are for the Union Pacific system." The chart and bulletin were marked respectively Defendants' Exhibits 64 and 65, 64 facing p. 4091 of the record and 65 appearing on that page. I have prepared a statement explanatory of the purchasing power of labor, materials, and freight rates in the United States.

Statement explanatory of purchasing power of labor, materials and freight rates.

"We took the prices of commodities as given by the Department of Commerce and Labor, Bulletin No. 81, for the years 1890 to 1907, inclusive. These prices were based upon an examination of the prices of 258 commodities by the Bureau. Some 42 hundred manufacturing and mechanical establishments were considered in making these computations. (4092) We took the prices of wages from the same source, Bulletin No. 77 of the Department of Labor. We took the freight rates from the Interstate Commerce Commission statistics. We put those in parallel columns, and by dividing the prices of commodities by the price of freight rates, we determined the convertibility of commodities into payments for transportation. By dividing the prices of labor by freight rates we determined the convertibility of labor into payments for transportation. By dividing the prices received by the railroads for compensation by commodities we determined the convertibility of the product of the railroads, or transportation, into what they required, or commodities, and by dividing the prices of transportation by the prices of labor we determined the convertibility of the product of the railroad organization in purchasing labor. Having determined those we charted them, and the results are shown on the chart which I have marked 'C,' a copy of which my secretary will hand you, which shows that from the year 1890 up to 1907 there were very large increases in the power of both labor and commodities to buy transportation, when there was just as pronounced a fall in the power of transportation to purchase either labor or commodities. Two of the lines trend upward very rapidly and two downward very rapidly, the separation in any one year showing the extent to which the value of the product of the railways depreciated and the extent to which labor and commodities appreciated. The object of going back to 1890 was for the reason that the Department of Commerce and Labor takes as the basing figure the average for the ten years from 1890 up to date; in other words, we were seeking for a period 1901 to date, and found they used the period from 1900 to 1890, the average of those years as the basis,

Chart showing increase in power of labor and commodities to buy transportation, and decrease in power of transportation to buy labor or commodities.

but as all the years are put on here anyone can easily determine the rate of separation of these two sets of figures. * * * The purchasing power of commodities and labor in terms of railroad transportation has increased about 43 per cent. from 1900." The purchasing power of commodities and labor—to purchase railroad transportation has increased that much. The power of railroad transportation to purchase commodities and labor has fallen about 30 per cent. in the same time. One has risen 42 per cent. above, the other has fallen 30 per cent. below the average for the basing decade.

Commodities and wages have risen very rapidly, while transportation rates have remained stationary or declined.

The short of it is this: that commodities and labor yielded more dollars and transportation less dollars. "Or, to put it in another way, the commodities and labor have both risen very rapidly and they follow almost parallel from 1898 or 1899, and they fall in the purchasing power of transportation for commodities and labor, running almost parallel lines down hill from 1899. Or, to put it in still another way, commodities and wages have risen very rapidly, and (4093) rates for the transportation of freight and passengers have remained stationary, or possibly have declined a little." (Chart last referred to, Defendants' Exhibit 66, faces p. 4092 Record.) I have prepared a chart showing the effect of the economic conditions described here upon the public as a consumer of transportation. (This chart, Defendants' Exhibit 67, faces p. 4092 of the Record.) "This chart is headed: 'Relative Prices of Labor and Material, and Actual Earnings per Passenger and Ton Mile of Union Pacific System and Southern Pacific Company compared with what Earnings should be because of depreciation in exchange value of Transportation since 1901.'

"The upper diagram on the chart shows the prices of labor and prices of commodities from 1901 to 1909 and the purchasing power of money to buy labor and commodities between the same periods, the authorities being, as before, the bulletins of the United States Bureau of Labor, the numbers of which are given on the chart. The second diagram shows the earnings per passenger per mile in cents. The two upper curves in that second diagram show what the Union Pacific and the Southern Pacific earnings should have been to have kept pace with the rises in prices of material and labor. The two lower lines in that diagram show what the rates actually were. The separation each year between the two sets of lines shows the savings in rate per passenger mile to the public through the roads having refrained or, perhaps I should say, having been unable to raise their rates to offset them for the higher prices of labor and material that they were forced through economic conditions to pay. The third diagram on that sheet gives exactly the same data as to earnings per ton mile on freight. The divergence of the two sets of lines again being the cents and fractions of a cent per ton mile that the public did not pay through the roads not having raised their rates to offset the increased prices of material and labor.

"At the bottom of the sheet there is shown in dollars and cents

the actual amount saved to the public in those years. Those amounts, of course, would be gotten by multiplying the ton mileage and the passenger (4094) mileage rates by the total number of passenger miles and ton miles. In the eight years the public were saved $154,000,000 through non-raising of the freight rates to meet the raises of the prices that the roads were paying for commodities and labor. * * * I will read the note on Exhibit 67: 'In 1901, the basing year, labor and commodities had already greatly increased over previous years, labor being 8 per cent. and commodities 21 per cent above 1897 and 8 per cent above average for years 1890 to 1899;' * * * the basing figures are taken from the bulletins of the Bureau of Labor and the Interstate Commerce Commission, the deductions therefrom having been made under my immediate direction in my office."

Public saved $154,000,000.

Exhibit 68 (appearing at p. 4096 of the Record) shows in tabular form what exhibit 67 shows graphically. "The first line of the statement shows relative prices of labor for the years 1901 to 1907, and 1908 and 1909 are estimated. Those relative prices were taken the same as in 1907, as estimates, and would at least be as much. We know, however, from what has transpired since that they would be very much more, because the index prices that are published by political and economic journals show the highest in January, 1910, that they have ever been in the United States. The first line shows the relative prices of labor between 1901 and 1909, in percentages, 1901 being taken as the basing year or unity. The second line shows the relative prices of commodities. The third line shows the relative prices of labor and materials. And the fourth line shows the purchasing price of the dollar in transportation. * * * Under Union Pacific system the statement shows that the average revenue per ton mile was one cent and three mills in 1901, 96-100 of a cent in 1902, 98-100 in 1903, 99-100 in 1904, 96-100 in 1905, 93-100 in 1906, 96-100 in 1907, 1.003 in 1908, and 1.025 in 1909. (4095) * * * Now those were the actual rates.

Tabulated statement showing relative purchasing power of labor, and commodities, and of transportation.

Ton mile rate on U. P. reduced.

"The next line shows what the revenue per ton mile should have been to offset the depreciation in the exchange value of transportation. In 1902 the actual rate was .96—it ought to have been 1.07; in 1903 the actual rate was .98—it ought to have been 1.09; in 1904 actual .99—it should have been 1.09; in 1905 actual .96—it should have been 1.12; in 1906 it was actual .93—it should have been 1.17; in 1907 it was actual .95—it should have been 1.23; in 1908 it was 1 (unity)—should have been 1.19; in 1909 it was 1.02—it should have been 1.23. Now, the next line on that statement shows, of course, the difference between the first two lines. * * * The next line shows a saving to the public per ton mile. The next line shows the average actual revenue per passenger mile; immediately below it what the revenue per passenger mile should be to offset the depreciation in exchange value of transportation. The next line shows the saving to the public per passenger mile and the last line the total

saving in dollars and cents to the public. Exactly the same figures are shown under the head of Southern Pacific Company. In the last line of the statement is given the total saving to the public on both systems; and finally, outside the frame, at the bottom of the sheet is given the aggregate saving by both systems for the entire period, or $154,000,000. * * *

"The rates given are, of course, average rates for the entire traffic of the company. Between the years 1901 and 1909 there was a material difference in the class of freight carried; for instance, the products of mines decreased 818,000 tons; the products of agriculture increased 290,000 tons; the products of animals increased 106,000 tons, and the average haul was much less in 1909 than in 1901, showing a growth of local freight traffic, the rates of which are generally higher than through rates. In other words, the slight change in the actual rate would be accounted for by those changes in the character of freight carried and in the character of the freight as dependent on classification, and the character is distinguished between local and through. For instance, the average haul in 1901 was 343 miles, and 1909, 267 miles. * * * Southern Pacific."

Difference in class of freight carried.

I have prepared a statement of the data which I have just given in my explanation of the showing by the actual figures of an increase in the average revenue per ton mile, S. P. (4097) My authority is the Annual Reports. (This statement, Exhibit 69, appears at page 4097 of the Record.) As to capital expenditures and the way in which they have been made so far as the benefit to the public is concerned, in the operation of the properties for public use:—

"Capital expenditures, as I have already touched on it, were all made with a view of increasing the efficiency of these railroads as instrumentalities of transportation. Of course some of the capital expenditures were applied to the building of new branches and the acquisition of new lines, but outside of that all of the other capital expenditures were for the purpose of making these railroads more efficient transportation machines, by increasing the equipment, reducing grades and curvature, which is another way of saying that you increase your equipment, because by increasing the capacity of what you have, by making grades less, you add that many more locomotives to your equipment; by increasing the number of side tracks, extending terminals, purchasing property all over the line, at small stations and large ones, for increased facilities, putting up larger stations, increasing the size of water stations, building double tracks, putting in automatic signals." Without these capital expenditures and improvements, the roads could not have handled the business at all. "They could have handled it to a certain amount, but with the increased traffic on all of the roads, due to the development of the country, they would have been actually swamped."

Capital expenditures all made to increase efficiency of the roads.

(4098) I have prepared a graphic showing of the improvement in physical condition on the U. P. and the S. P. Systems since the

Graphic showing of improved physical condition of U. P. and S. P. since 1901.

year 1901. "I have this also in two forms—a typewritten sheet giving the actual figures, and a graphic chart platting those figures. The two give exactly the same information, but in different shape. * * * Firstly, as to the Union Pacific system, the two years compared being 1901 and 1909; mileage of first main track increased 10 per cent.; mileage of additional main tracks 517 per cent.; mileage of sidings 42 per cent.; expended on maintenance of roadbed and structures per mile operated 26 per cent.; percentage of rail 75 lbs. or over in main lines, in the first year was 25 per cent., and in the second year it was 78 per cent."

Percentage of increase in improvements on U. P.

It increased about three times as much. There was a slight increase on the branches, 6 per cent. "On the total system it increased from 17 per cent. to 50 per cent. The percentage of track ballasted increased from 28 per cent. to 50 per cent. Percentage of road fenced from 60 to 83. Percentage of timber trestling creosoted from none to 2 per cent. Percentage of ties Burnettized, that is, treated with chemicals to prevent decay, increased from nothing to 42 per cent. Percentage of track with tie plates increased from 4 per cent. to 49. Percentage of tracks protected by automatic block signals, that is, main lines, from 6-10 of 1 per cent. to 70 per cent. The train accidents per million locomotive miles run decreased from 19.3 to 9.9. The locomotives owned increased from 832 to 1,088. The average hauling capacity of locomotives owned increased 39 per cent. The tons of freight handled per train increased 50 per cent. Passengers per train 66 per cent. Passenger equipment 25 per cent. Freight equipment 18 per cent. Average capacity of freight equipment 38 per cent. Average tons of freight handled in each loaded car 16 per cent. Expended per annum for maintaining each locomotive 22 per cent.; for maintaining each passenger car 62 per cent.; and for maintaining each freight car 82 per cent. * * * Total capacity of cars owned, in tons, 62 per cent."

Correspondence in quality of improvement as between U. P. and S. P.

The correspondence in the quantity of improvement as between the U. P. and the S. P. is shown by the chart to the eye at once—there is a correspondence in nearly every item. (4099) The chart referred to, marked Defendants' Exhibit 70, faces page 4098 of the record, and the typewritten sheet carrying the charted statement into arithmetical expression, Defendants' Exhibit 71, is at page 4099. (4100) The authority for Exhibit 71 is the annual report. Exhibit 71 shows the improvement in physical condition of the U. P. and S. P. Systems between the years ending June 30, 1901, and June 30, 1909, and the data given on the sheets have been platted graphically on Exhibit 70.

Total expenditures for improvements on U. P.

For the eight years ending June 30, 1909, on the U. P. the expenditures on improvements under 36 items that I have listed on this exhibit, covered in round figures nineteen and one-half millions; on some ten other items, such as second-named track and terminals, $32,475,000; reconstruction and grade revision, $5,334,000; rolling stock, $22,611,000; change of line between Omaha and Lane, $3,841,000—total $64,263,000; construction and acquisition

of new lines $57,245,000—total $121,508,000. In addition, the U. P. purchased jointly with the S. P. equipment of the Pacific Fruit Express aggregating $10,671,000, half of which was paid by the U. P. The exhibit of the foregoing data is marked Defendant's Exhibit 72, appearing at pages 4100 and 4101 of the record.

Expenditures on U. P. during 8½ years ending June 30, 1901.

(4102) Exhibit 72 has a statement headed "8½ years ending June 30, 1901," which is further analyzed into three years ending June 30, 1901, and 5½ years ending June 30, 1898. In the 5½ years preceding the reorganization, only $201,000 were expended on general betterments, and in the three years following the reorganization up to the end of the fiscal year June 30, 1901, the present company being organized in 1898—the amount spent was $5,341,000. This latter amount embraced for these three years 36 items of general betterments, and different items of operating expenses. The next ten items raised the total to $6,421,000; reconstruction and grade revision accounts for $9,106,000; rolling stock, $10,127,000; construction and acquisition of new lines, $6,819,000—grand total for the three years ending June 30, 1901, $32,474,000. For the 5½ years ending June 30, 1898, for all the items I have specified, there was spent only $983,000. The two columns, one for the three years and the other for the 5½ years, are combined in the last column, and total $33,457,000, carrying us to June 30, 1901; and then the first column, with its total of $121,000,000, and the $5,000,000 for the Pacific Fruit Express, makes the total for the eight years beginning June 30, 1901. I have a similarly constructed statement for the Southern for the 8½ years ending June 30, 1901, and the eight years ending June 30, 1909.

Expenditures on S. P. during 8½ years ending June 30, 1901, and during 8 years ending June 30, 1909.

(4103) For the 8½ years ending June 30, 1901, $12,390,000 was spent on general betterments, and for the 8 years ending June 30, 1909, $41,669,000. "Adding to the above reconstruction and change in line and terminal properties, the total for the 8½ years ending June 30, 1901, was $15,361,000, and for the period ending 1909, $66,327,000. Adding to these figures the amount spent for rolling stock, steamships and other floating equipment, for the period 1901, is $30,792,000; for the second period $107,373,000. Adding to the above figures the cost of line changes, grade reductions, to the period ending 1901, the total expenditure was $30,792,000; for the second period $127,431,000. And finally adding in the cost of construction and acquisition of other new lines and terminal properties, the grand total for the period ending 1901 was $57,722,000; for the second period $241,944,000. And to this total should be added $5,335,000—one-half cost of the Pacific Fruit Express equipment bought jointly with the Union Pacific." This exhibit marked Defendant's Exhibit 73, appears at pages 4103-4 of the record.

Character of improvements, etc.

(4104) Some of the important improvements that have been made in the condition of these roads since 1901 are as follows: "On the Union Pacific the policy started in 1898, of reducing grades, taking out curves, ballasting, improving terminals, and block sig-

naling, was continued subsequent to 1901 and has been continued really up to the present day. On the Union Pacific, some of the particular items might be mentioned, such as the change of line between Omaha and a point about 22 miles west of it, by building what is known as the Omaha-Lane cut-off, which substitutes for a high grade single track line with very heavy curvature and for a considerable part of its distance through a thickly settled community, a low grade double track line with very straight alignment, with few or no grade crossings on it, which can be operated at very high speed, and with a reduction of distance in the 22 miles of about 10, or nearly 50 per cent. A second notable improvement was the reduction of the summit of the Union Pacific over the Rocky Mountains, and a substitution of a road with excellent alignment, fully ballasted, and for nearly all of its distance double tracked in place of the old line, which was very crooked and climbed the summit several hundred feet higher than the present one, and was single track. Both of these lines have been fully protected by the most modern block signal devices. On the Union Pacific, between Omaha and Ogden, there have been built, at the present time, rather over 400 miles of double track, and there must be from 150 to 175 miles authorized and under various (4105) stages of construction.

Particular items of improvement on U. P.

Omaha-Lane Cut-off.

Reduction of grade at summit of Rocky Mountains.

Double track.

"All of the main line of the Union Pacific, some of its line from Cheyenne to Denver, and some of its Kansas division from Kansas City to Denver, has been thoroughly and absolutely protected by the most efficient means of automatic electric block signaling known. When I say Union Pacific, passing on to the O. R. & N. and Short Line, the policy of block signals has been followed there; and the main lines of those two roads are well advanced in block signaling. The O. R. & N. is complete, from one end to the other, from Huntington to Portland; and the Oregon Short Line, for a considerable part of its mileage is complete. So to-day the Union Pacific has a larger percentage of its main line track on which its traffic is densest and the risk of accident greatest, protected with high grade block signaling, than any road west of the Mississippi River, and it is exceeded in that respect by very few roads east of the Mississippi River. At the same time, on the Union Pacific, freight division terminals have been increased as to trackage and have been remodeled, making the work of switching, marshaling and breaking up trains, quicker and more efficient. Water stations have been increased; ballasting has been pushed; the standard of rail has been raised from 70 and 75 pounds to 90; and in the renewal of small structures, metal, concrete and masonry have been substituted for timber. As to the Southern Pacific, some of the principal items of improvement have been the Bay Shore cut-off, giving a new entrance to the Sunset lines into the City of San Francisco, avoiding very heavy grades, very crooked track, through a densely settled part of San Francisco, substituting for a single track a double track at water grade, reducing distance about 4 miles between common points, and cross-

Automatic electric block signals.

Improvement of freight terminals.

Principal items of improvement on the S. P.

Bay Shore Cut-off on Sunset line.

ing every street in San Francisco that is crossed, at separated grades instead of at grade. The second notable improvement has been the construction of what is known as the Dumbarton cut-off. This is also on the Sunset line, and will enable trains from the San Joaquin Valley lines of the Southern Pacific to come into San Francisco over a bridge in lieu of transferring over the ferries—as they do at the present time"—I mean the ferries from the Oakland to the San Francisco side of San Francisco Bay. "The second notable improvement on the Sunset line has been the new line between Montalvo and Burbank, by which a low grade line, with low curvature, has been substituted for a very crooked line with numerous choppy grades. The policy of double tracking has been followed on the Southern Pacific also, double tracks having been built from San Francisco to San Jose, from Los Angeles to Burbank, and from Los Angeles to Shorb. In Arizona and New Mexico, construction has been begun on a line in the canyon of the Gila River, which will eventually give a low grade line for a long distance as against lines with very obstructive grades now (4106) being operated.

Dumbarton Cut-off on Sunset line.

New low grade line between Montalvo and Burbank.

Double tracking.

"Extensive improvements have been made in the terminals at San Francisco, Oakland, Los Angeles, San Jose, and at almost every freight terminal on the entire system. Sidetracks have been lengthened. Renewals of light metal and wooden bridges have been made with modern steel bridges of the heaviest specifications. On the lines east of El Paso, over two millions of dollars have been spent in building an ocean terminal at Galveston, for the accommodation of the Company's New York and Galveston fleet. At Avondale, 10 miles above New Orleans, a ferry transfer has been put in, to enable the passenger trains to enter the modern passenger station of the Illinois Central, in the heart of the city, the Southern Pacific before that time having had such poor passenger terminals in New Orleans as to be negligible; indeed, they were so poor that the passengers alone crossed the river; the baggage cars were ferried; and it made a break for the passengers in crossing the river. At present, the whole train is ferried, and passengers do not leave the train until they reach the Union station. In the suburban lines around San Francisco Bay, steam motive power is being abandoned and electric motive power installed. Numerous additions have been made to the company's fleet of steamers plying between New York, on the one hand, and New Orleans and Galveston on the other. A number of these ships have been delivered, and four very large freight ships are now under contract for delivery in the latter part of 1910. Automatic block signaling has been pushed on the Southern Pacific lines, as it has been on the Union Pacific, primary attention being given to the main lines. So, in connection with the Union Pacific, the line from the Missouri River to San Francisco Bay is now fully protected by the highest grade of electric block signaling.

Improvements at terminal points of S. P.

Ocean terminal at Galveston.

Ferry transfer at New Orleans.

Additions to fleet of Morgan line.

Automatic block signals.

"And on the Sunset line, from San Francisco to New Orleans, a very considerable part of the mileage has been protected, and

future additions to this equipment are being made on this line, it receiving second attention on account of its much less traffic density than the Southern Pacific's line from San Francisco to Ogden. On the lines east of El Paso, in the past four or five years every metal bridge that has been put in the line in the construction in 1882 and 1883, has been removed and replaced with very much heavier steel structures. Sidings have been lengthened, terminal properties purchased, and equipment added to very generously; as a result of which the property is in a very high state of efficiency. There are some photographs here of these various improvements, selected from a large collection, that possibly will illustrate some of these points, showing the standard of bridge construction, station construction, terminals, block signals, bridges, and so on. In listing these improvements on the Southern Pacific I should like to add an allusion to the Ogden Lucin cut-off—perhaps the most important improvement they have ever made. It escaped my memory. That is the low grade line across Salt Lake, saving 44 miles of distance in 144, and saving a climb over the Promontory Mountains.

New bridges.

S. P. property in a very high state of efficiency.

Lucin Cut-off.

"And another piece of work of great importance, which (4107) is now perhaps half finished, is the reconstruction of the line over the Sierra Nevada Mountains from Rockland to Colfax, a distance of 32 or 33 miles, substituting a 1½ per cent. grade of good alignment, suitable for fast time, for a road with 2.2 per cent. grades and extremely crooked; the new line being intended as an up-hill track, the old one as a down-hill track, so that incidentally, those 33 miles will be double tracked. The photographs referred to by the witness, and produced by him, were offered in evidence by the defendants, received without objection, and marked Defendants' Exhibits 74 to 98, both inclusive; but it was stipulated that the same need not be printed in the record of this case but might be used by counsel in the argument the same as if the photographs had been incorporated in the record. * * *

Reconstructing line over Sierras.

"Defendants' Exhibit 74 is a photograph of the stone passenger station at the entrance of Yellowstone Park. Defendants' Exhibit 75 is a distant view of the new station at Salt Lake City, new tracks, and street viaduct across the freight and passenger yards at Salt Lake City. Defendants' Exhibit 76 is a new masonry and brick station at Payette, in western Idaho. Defendants' Exhibit 77 is a photograph of the Salt Lake station complete except as to the train shed and concourse, which has yet to be built. Defendants' Exhibit 78 is a section of the recently completed double track of the Union Pacific near Lawrence, Kansas, between Topeka and Kansas City, showing the installation of the electric block signals. Defendants' Exhibit 79 is a section of the Union Pacific track near Kearney, Nebraska. Defendants' Exhibit 80 is the same, from a little different view point. Defendants' Exhibit 81 shows overhead road crossing, in a very deep cut just west of Omaha, on the Lane cut-off. Defendants' Exhibit 82 shows a section of track ballasted with furnace slag, near El Paso, Texas. Defendants' Exhibit 83 is the Bay

Photographs of improvements.

Shore cut-off, in San Francisco, showing block signaling, separation of street grades, and tunneling. Defendants' Exhibit 84 is a photograph of a crossing of San Francisco Bay at Dumbarton Point. Defendants' Exhibit 85 is a section of present standard Southern Pacific track with rock ballast, ninety pound rail and block signals, near San Jose, California. Defendants' Exhibit 86 shows a reinforced concrete passenger station at Santa Barbara, California. Defendants' Exhibit 87 shows a masonry passenger station at Tucson, Arizona. Defendants' Exhibits 88 and 89 are photographs of the trestle and station in the middle of Salt Lake, with passing side tracks on trestle work, Lucin cut-off, Southern Pacific Company, near Ogden, Utah. Defendants' Exhibit 90 shows a rock ballasted curve between Del Rio and Sanderson, Texas. Defendants' Exhibit 91 shows 90 pound rail and gravel ballasted track near El Paso. Defendants' Exhibits 92 and 93 show standard 90 pound track near (4108) Sierra Blanca, Texas. Defendants' Exhibit 94 shows a brick passenger station at Beaumont, Texas. Defendants' Exhibit 95 shows a brick passenger station at San Antonio, Texas. Defendants' Exhibits 95 and 96 are the same; San Antonio. Defendants' Exhibit 97 shows a new steel bridge over Berwick's Bay, 80 miles west of New Orleans, Louisiana. Defendants' Exhibit 98 shows signal bridges and interlocking in the freight passenger yards at Houston, Texas."

Annual expenditures for maintaining roadbed and equipment, with comparative figures as to other lines.

For the last decade, for instance, the annual amount spent for maintaining track and equipment, per mile, on the U. P. system, averaged $2,327; S. P. $2,676; Atchison, $2,282; N. P. $2,095; G. N. $1,648; D. & R. G., $1,738; C. & N. W., $1,921; C., M. & St. P., $1,633. On June 30, 1909, the U. P. and S. P. systems had in operation 5,324 miles of line protected with these block signals. In 1901 they had 89 miles. On January 1, 1910, there were only 14,419 miles in operation in the entire United States. The U. P. and S. P. had considerably over one-third of the entire mileage operated with those signals, in the United States. I have said, several times, that these signals were the most modern and improved that we could find. We have adopted the most modern and most efficient type.

Block signals give warning of broken rails and open switches.

"These signals not only notify a train by the setting of two signals, of danger ahead of it, that there is a train, or a broken rail, or an open switch within two blocks ahead of it; but they also maintain two signals, at all times, of danger behind a train; so that, as the train passes over the road it keeps two signals always set ahead of it, and two signals set behind it, so as to protect against collision of either approaching or following trains. In addition to that, the signals give warning of broken rails, or of open switches, or of a car blown out of a switch on to the main line, or of any metallic obstruction, such as a rail laid from one rail to another for wrecking purposes, the theory being this: That the signal is maintained at safety by an electric current that is sent through the rails. Anything that breaks the continuity of that current sets the signal at danger, so if a rail breaks the signal is set at danger, or if a switch

is open, breaking the continuity of the main line, the signal goes to danger; if an iron bar or rail is set across the track for the purpose of wrecking a train, that lets the current escape and sets the signal of danger. If the wheels of a car escape out of a sidetrack to the main line, they set the signal of danger; and, of course, if a train (4109) is ahead, the axle connecting the two rails sets the signal of danger. So you get, in that way, protection not only against collision, but against broken rails, open switches, wash-outs that may break the track, landslides that may break the track; and it is largely to those signals that the increased safety of operation has been brought about."

Statement of betterments on line, Omaha to San Francisco, and line, New Orleans to San Francisco.

I have a statement showing betterments and additions on the route Omaha to San Francisco, and the route New Orleans to San Francisco, for the 8 years ending June 30, 1909. (This statement, marked Defendants' Exhibit 99, appears at page 4110 of the record.) (4111) The routes are the Ogden route and the Sunset route. "The corporations in the route making up the Omaha-San Francisco line are the Union Pacific Railroad Company and the Central Pacific. There were spent in betterments and additions, for the Union Pacific, on that particular line, in those years, $27,834,000; on the Central Pacific, $29,972,600. On the betterment of their through line, $57,806,000. On what is known generally as the Sunset Line, from New Orleans to San Francisco, there was spent on the lines in Texas, or east of El Paso, that are headed 'Sunset Lines' on this statement, $7,908,000; on the Southern Pacific Railroad (which is the corporation covering the line from El Paso to San Francisco) $27,391,000. Total for the New Orleans-San Francisco line, of $35,299,000. This excludes rolling stock, and floating equipment. Of course the Sunset Line is made up partly by water line, and the value of the steamships and floating equipment is not in these betterments, nor is the rolling stock."

Expenditures for second main track.

Referring to the item of second main track $9,390,416.03, under the Omaha-San Francisco tabulation, and as against that $885,919 in the tabulation for the route New Orleans-San Francisco, much of the difference in reference to betterments is explainable by reference to that one item of second main track. Speaking of the betterment items, outside of reconstruction, the elimination of that one item would reduce the Omaha-San Francisco to $25,000,000, and leave the other about $22,000,000. The situation in respect to this item of second main track in this regard, is a question of traffic density. "The traffic density, that is the amount of traffic per mile, over the one route, is so much greater than the other, that the second main track on the line from the Missouri River to San Francisco Bay is one of the most urgent needs of the present day. On the other line the traffic is so much lighter that that necessity has not been felt, except (4112) around extremely important traffic centers; for instance, around Houston, Texas, we have a few miles of double track; and out of our New Orleans terminals we have some double track; in the sugar districts of Louisiana we have a

piece of double track; around Los Angeles, north and south, we have double track; and north and south out of San Francisco. But the mileage of second track on the Southern Pacific is smaller. The traffic density on the Ogden route is just double what it is on the other."

The difference in traffic density would be reflected necessarily to some extent in the difference of automatic signal mileage as between the two routes. "The installation of automatic signals is extremely expensive, not only in first cost but in the cost of maintenance; because it is a delicate bit of machinery, and requires a great deal of watching, and, unless in the highest state of efficiency, it is useless; so, of course, we have selected the mileage where the returns from this protection would be greatest. Those are the high speed lines of high traffic density." They are the lines that need the improvement most. Referring to the item of "Reconstruction and Changes in Line," of eleven million assignable to the Omaha-San Francisco route, and the item of $856,511 attributable to the New Orleans-San Francisco route, there are two reasons at work in respect to that difference.

Automatic block signals have been placed on high speed lines of high traffic density.

"The first one is the same one that I have mentioned—traffic density. When we consider the question of reconstruction of a piece of track, the elimination of curves and grades, the cost of the improvement is studied, and a very careful estimate made of the economies that will result from the changes. The economies, of course, are directly proportional to the density of traffic. In other words, if the new line will shorten the distance two miles, and there is one train a day over that track, it is not very much of a saving. But if there are 40 trains a day over that track, and each one saves two miles, in the aggregate the saving is very large. And when the proposition is presented to the directors, the saving in operation, based generally, for conservatism, on the traffic of the present time, is capitalized at the ruling rate of interest; and if that capitalization will build a line, it is always authorized. If not, we may be told that the time is not ripe yet; that the traffic should get a little denser before warranting that expense; or, with the existing increases of traffic, they may conclude to anticipate the increases and authorize it to-day and take their return a year or two hence. That is one reason why more reconstruction was done on the Ogden line. The traffic is much more dense, and expenditures are warranted there, under that traffic, that would not be warranted under the traffic of the Sunset Line, which averages only half as much.

Economies directly proportional to density of traffic.

Traffic on Ogden line more dense than on Sunset line.

"The other reason why the reconstruction expense (4113) is so much greater is this: That the Union and Central Pacific lines were completed in 1869, were located and begun in the early sixties. The Sunset Lines were completed in 1883. Counting from the times of completion, that was practically 14 years later; and the standards of railroad construction had risen very much in those 14 years. The Sunset Line in the beginning was built to higher standards of location and ruling grades than were the Union and

Why reconstruction expense was larger on Ogden line.

Southern Pacific. In other words, the ruling grades on the Sunset Line with the exception of a few spots in Arizona, were 1 per cent. (52.8 feet to the mile). On the Central Pacific they were 116 feet to the mile—more than double as much. Again, the Central and Union went through much more mountainous country than the Southern; and the original alignment of the Southern Pacific was very much better than the alignment of those two. Therefore the necessity to reconstruct and improve was not as great on the Sunset Line as it was on the others, and never will be. The Sunset Lines west of San Antonio were built, from one end to the other, with the highest grade of metal bridges that were built at the time of their construction; built almost uniformly on masonry piers. On the old Central and Union Pacific all of the bridges were wood."

Chart showing improvements, Council Bluffs to Oakland Pier, compared with main line, Algiers to San Francisco.

I have charted the improvement in physical condition since June 30, 1901, of the main line Council Bluffs to Oakland Pier, compared with the main line Algiers to San Francisco. (Defendants' Exhibit 100, facing page 4114 of record.) "The mileage of first main track, on the Council Bluffs line, was 4 per cent. less in 1909 than in 1901; due, of course, to the elimination of a little mileage by reconstruction. On the Sunset Line, it was 1 per cent. less. The mileage of additional main tracks, on the Council Bluffs line showed an increase of 402 per cent.; on the Sunset Line, 143 per cent. The mileage of all main tracks on the Council Bluffs line showed an increase of 16 per cent.; and on the Sunset Line, of 2 per cent. There was expended on maintenance of roadbed and structures, per mile of road operated, on the Council Bluffs line, 19 per cent. more, and on the Sunset Line 62 per cent. more in 1909 than in 1901. The percentage of total road laid with 80 pound rail or heavier, increased from 18 per cent. in 1901, to 81 per cent. in 1909, on the Council Bluffs line; and from 6 per cent. in 1901 to 60 per cent. in 1909 on the Sunset Line. Miles of rail 75 and 76 pounds, was 35 per cent. on the Council Bluffs line in 1901; 19 per cent. in 1909; and was 49 per cent. on the Sunset Line in 1901, and 40 per cent. in 1909."

(4114) This means simply the rails of that particular weight, heavy rails 80 and over, medium 75 and 76, and light 70 and under. "In other words, the three statements together show the gradual retirement of light rail and the substitution of the heavier rail. The miles of rail 70 pounds or under, which we would class as light rails now, on the Council Bluffs line was 47 per cent. of the total, in 1901, and was nothing in 1909. On the Sunset Line it was 45 per cent. in 1901, and was nothing in 1909. Miles of fully ballasted track was 57 per cent. of the total on the Council Bluffs line in 1901; 92 per cent. in 1909; on the Sunset Line, 62 per cent. in 1901; 72 per cent. in 1909. Miles of track fully protected with tie-plates, Council Bluffs line, 19 per cent. in 1901; 95 per cent. in 1909. On the Sunset Line 78 per cent. in 1901, 96 per cent. in 1909. Miles of track protected by automatic signals, on the Council Bluffs line, none in 1901; 96 per cent. in 1909. On the Sunset Line, 1 per cent. in 1901 and 54

per cent. in 1909. Per cent. of timber trestle, built of timber treated with creosote; Council Bluffs line 12 per cent. in 1901, 32 per cent. in 1909. Sunset, 56 per cent. in 1901, and 80 per cent. in 1909. Percentage of ties Burnettized, on the Council Bluffs line, 26 per cent. in 1901; 60 per cent. in 1909. On the Sunset Line, 26 per cent. in 1901, 39 per cent. in 1909. The increase in the length of sidings in the eight years ending June 30, 1909, between Council Bluffs and Oakland Pier, was 292 miles; and between Algiers and San Francisco 479 miles. * * *

"On the Council Bluffs line, between 1901 and 1909, there was an increase of 803 miles of 90 pound rail; 679 miles of 80 pound rail; with decreases of 172 miles of 76 pound rail; 74 miles of 75; 551 of 70; 21 of 67; 344 of 60 and 62, and 1 each of 56 and 50. On the Sunset Line there was an increase of 1 mile of rail weighing 141 pounds to the yard. * * * It is a city rail; it is the girder rail in cities. 256 miles of 90 pound rail; 1,163 miles of 80 pound rail. The decreases were 139 miles of 76, 60 miles of 75, 972 miles of 60 and 62, 3 miles of 56, 50 miles of 54, and 121 miles of 50 and 52." (4115) Between Algiers and El Paso, in the eight years ending June 30, 1909, there were 40 bridges built, aggregating 14,103 feet, nearly three miles, the material used being steel and masonry, and the total cost $2,339,000; and $384,000 was expended in strengthening trestles. In connection with Exhibit 100, I have prepared an arithmetical statement for the U. P. and S. P., showing the improvements annually on each system from 1901 to 1909. (Defendants' Exhibit 101, appearing at page 4118 of the record.)

Arithmetical statement showing annual improvements on U. P. and S. P.

This exhibit shows for the Union Pacific new locomotives purchased in 1902, sixty; in 1909, six; total for the eight years ending June 30, 1909, 522. The locomotives purchased in 1907 were 179, and in 1908, 48. (4116) Passenger cars: in 1902, 23 were purchased; in 1909, 22; in 1907, 76; in 1908, 57. Total for the eight years, 258. Freight cars: in 1902 we bought 303; in 1903, 649; 1904, 1701; 1905, 858; 1906, 2175; 1907, 3100; 1908, 1378; 1909, 2326. Total for the eight years, 12,499. Work cars: in 1902 we bought 10; 1903, 7; 1904, 107; 1905, 36; 1906, 60; 1907, 171; 1908, 312; 1909, 4. Total for the eight years, 707. The number of miles of new steel rails laid was as follows: in 1902, 550; 1903, 196; 1904, 220; 1905, 292; 1906, 417; 1907, 288; 1908, 215; 1909, 250. Total for the eight years, 2,428. In the eight years ending June 30, 1909, 17,220,000 cross-ties were renewed. It is equivalent, in miles, to 6,146. The total for the same period, of tie-plates used was 15,766,000; equivalent in miles to 2,818. The total miles of track ballasted, for those years was 1,455. In respect to wooden bridges, as expressed in lineal feet, and their replacement by permanent bridges or embankments, the total for those eight years was 88,256 feet.

There were put in during these eight years 54,398 feet of iron or concrete bridges. 659 miles of new sidings were built; and 159

miles of old sidings taken up—the net result was 500 miles more of siding. During these eight years the S. P. purchased 920 locomotives (4117); passenger cars, 881; freight cars, 26,471; work cars, 2,489; laid 3,970 miles of new steel rail; renewed 24,372,000 crossties, equivalent in miles to 8,555; used 25,696,000 tie-plates, equivalent in miles to 4,542; ballasted 1,447 miles of track; replaced 136,411 lineal feet of wooden bridges; put in 49,826 lineal feet of new iron or concrete bridges; built 1,231 miles of new sidings; and took up 269 miles of old sidings.

Train service on Sunset and Omaha lines.

(4119) The passenger service is more frequent on the Omaha line as compared with the Sunset, in view of the greater train density, but the passenger train service on the Sunset is quite up to that on the Omaha line except as to frequency. A slightly greater speed is made on the Sunset freight trains than on the Omaha freight trains, there being much less obstruction by trains, the movement of trains being less impeded by meets of opposing trains. For the last year on the Omaha line the average speed of freight trains, excluding stops, was 17.10 miles per hour; on the New Orleans line 18.06; this is the actual time from the train sheets; it is taken from a form rendered every month showing the actual speed of freight trains, excluding stops.

Chart showing average speed of freight trains and relative number of meeting points.

(4120) I have prepared a chart of the average speed of all freight trains in miles per hour, and relative number of meeting points of all trains, including in that a specification for the U. P., O. S. L., O. R. & N., and S. P. (Defendants' Exhibit 102, facing page 4119 of the record). This exhibit shows in the diagram in the upper left hand corner, the average speed of all freight trains between 1900 and 1909, reasonably uniform up to 1907, a sharp drop in 1908, and reasonably uniform in 1908 and 1909; up to 1907, between 17 and 17½ miles per hour; a drop to 16½ miles per hour in 1907, at which it remained during 1908 and 1909. This is for all freight trains of the four lines specified. The second diagram relates to the U. P. proper. The full line shows the freight train speed, and the dotted line above it the relative number of meeting points in the different years. The next diagram shows the same data for the O. S. L.

"I overlooked the fact that the basis of comparison changed in the second diagram. I will explain that now. In the second diagram, instead of being actual figures, in the left hand marginal column, they are relative, based on unity in the year 1900. That is to say, the lower lines, showing freight train speeds, show that in 1909 the freight train speed was 87 per cent. of what it was in 1900; and the number of meeting points was 47 per cent. more than they were in 1900. As to the Oregon Short Line, freight train speeds in 1909 were approximately 10 per cent. more than they were in 1900, and meeting points 65 per cent. more. On the Oregon Railroad & Navigation Company, the speed in 1909 was about 95 per cent. of what it was in 1902, the record being missing prior to that time. The meeting points increased by about 45 per cent. On the

Pacific system of the Southern Pacific Company, freight train speeds in 1909 are almost exactly the same as they were (4121) in 1900—a very trifling increase. The meeting points are 50 per cent. greater. * * *

"All these data were made up from these forms of ours, which exclude stops. But I want to call attention to the fact that, whilst that would change the actual speed of trains, it does not change their relation. All of these figures except the first diagram, relate to relative speeds and relative meeting points. * * * 1907 was an entirely abnormal year. All of the lines west of the Mississippi River—and I don't know but I might omit that and say all of the lines in the country were offered such quantities of freight that it was very much delayed; and October, 1907, also marked the time of the panic; and the sharp drop in the meeting points of trains after 1907 was due to the reduction of traffic following the panic. * * * I have a typewritten statement, giving the actual speeds, in miles per hour, which covers the same period as the chart. With the Union Pacific, Oregon Short Line and Navigation Company we could not get the data prior to 1902. For the Southern Pacific Lines we have them from 1900, and for the Union Pacific system lines from 1902 to 1909. * * *

Freight train speed on U. P.

"For the Union Pacific in 1902, the actual speed was 18.7 miles an hour; 1903, 17.6; 1904, 17.0; 1905, 16.5; 1906, 17.6; 1907, 18.4; 1908, 16.9; 1909, 16.3.* * * Oregon Short Line, in 1902, 15.8; 1903, 16.4; 1904, 16.7; 1905, 17.0; 1906, 17.1; 1907, 17.2; 1908, 16.9; 1909, 17.5. For the Oregon Railroad & Navigation Company, in 1902, it was 15.9; 1903, 16.5; 1904, 16.6; 1905, 16.1; 1906, 15.8; 1907, 15.4; 1908, 14.5; 1909, 14.9. For the Pacific system of the Southern Pacific Company, in 1900 it was 17.5; 1901, 17.7; 1902, 17.8; 1903, 18.0; 1904, 17.9; 1905, 17.6; 1906, 17.8; 1907, 17.3; 1908, 17.11; 1909, 17.7. For the Southern Pacific lines east of El Paso (or the Sunset Central lines, as they are called for brevity), in 1900, 16.8; 1901, 16.0; (4122) 1902, 16.1; 1903, 15.7; 1904, 16.6; 1905, 17.1; 1906, 16.8; 1907, 16.8; 1908, 15.8; 1909, 16.1. For all of the lines of the Southern Pacific in 1900, the speed was 17.3; in 1901, 17.02; and for all the lines, in both Union and Southern Pacific systems, in 1902, the speed was 17.2; 1903, 17.1; 1904, 17.2; 1905, 17.1; 1906, 17.3; 1907, 17.6; 1908, 16.7; 1909, 16.8."

On S. P.

On all lines.

Since 1901 we have moved the same volume of traffic in a very much less number of trains. "With the increase of traffic that culminated in 1907, with our roads generally, with single tracks only, the rapid increase of meeting points, with an increase of the number of trains, would have been such that we should not have been able to move the traffic at all; instead of being congested, we would have been absolutely unable to move. And as this increased traffic was offered us, through the purchase of heavier locomotives, and more efficient car and train loading, we were enabled to handle an equal volume of traffic with a largely reduced number of trains. To make my meaning clearer in regard to the obstruction of a single

Ability to handle traffic with less number of trains.

track line by multiplication of trains; if you have one train in each direction, there can be but one meeting point. If you have two in each direction, each of the two trains can meet either of the other two; and the number of meeting points becomes four. With three trains each way, the number of meeting points would be nine. In other words, the number of meeting points increases by the square of the number of trains in each direction. So if you increase from one train to ten each way, you increase the meeting points from one to ten times ten, or one hundred; with the additional obstruction of following trains having to look out for preceding trains. So the obstruction from a multiplication of trains on a single track increases so rapidly that the increase in the number of trains becomes almost prohibitive of traffic, after you double or treble the number of trains that you are handling, if you are handling a reasonable number in the beginning."

Number of meeting points increase by the square of the number of trains.

The number of trains become prohibitive of traffic.

Bearing in mind the figures that I have given for the speed of the freight service since 1901, we have still been able, with increased traffic, heavier locomotives, and longer trains, to give the speed indicated by those figures. Our freight service upon the U. P. and S. P. since 1901 is quite as good as that given by other transcontinental lines; we could not hold our business unless we did give it. (4123) As to the policy of the S. P. and U. P. in using heavier equipment to handle freight: "All of the transcontinental lines are really working on the same policy. In other words, efficient railroad management can be epigrammatically stated to be simply efficient car-loading and efficient train-loading; that is all there is to it. The fellow that gets the most efficient car-loading and the most efficient train-loading, distances his competitors. We are all working on the same lines; and there is only one way to do it. All of the lines are doing it in the same way, because there is no argument possible in that."

Freight service on U. P. and S. P. as good as that given by other transcontinental lines.

In respect to the line between Omaha and Ogden, I have prepared a chart showing gain in traffic density and changes in condition (Defendants' Exhibit 103, facing page 4123 of the record). "Defendants' Exhibit 103 shows, for the Union Pacific Railroad proper, the relative traffic over the main line between Omaha and Ogden, between 1896 and 1909, inclusive, the traffic of 1896 being taken as unity. The increase in freight traffic density, shown by the full line at the bottom of the chart, was 180 per cent. The increase in train density, which would be the number of trains per mile of road, is shown by the dashed line; and that increased only 80 per cent. Of course, if the trains had not been loaded better, the increase in train density would have been practically the same as the increase in traffic density, or 180 per cent., as shown by the line of dashes and crosses. Now, under existing conditions, that is, the conditions under which the increased traffic was moving, the increase in meeting points, or the handicap to trains getting over the road, increased 230 per cent. If the traffic had not been handled in a lesser number of trains, the handicap to the movement of freight

Chart showing gain in traffic density between Omaha and Ogden.

trains, in the increased number of meeting points, would have increased 680 per cent. as against 230."

Arithmetical statement showing gain in traffic density between Omaha and Ogden.

I have a statement converting the graphical descriptions of the chart into arithmetical statements for the same period, estimated on the basis of car mileage (Defendants' Exhibit 104, appearing at page 4125 of the record). (4124) "This typewritten statement shows, in actual figures, what the chart shows in relative figures; and the foot note 'Estimated on the basis of car mileage,' refers to the gross ton mileage in the years 1896, 1897 and 1898, at which times it was not kept, and it means that that was based on estimates of car mileage. In other words, we had the car mileage figures, and we estimated the load and weight of the cars in those three years only. From 1900 to date, we had the actual figures kept. It shows, briefly, that for the Union Pacific Railroad proper, the gross ton miles moved per mile of road (or traffic density, for short) was 2,838,000; in 1900 it was 3,655,000; in 1901, 3,810,000; in 1902, 4,098,000; in 1903, 4,312,000; in 1904, 5,468,000; in 1905, 6,520,000; in 1906, 7,349,000; in 1907, 8,087,000; in 1908, 7,765,000; in 1909, 8,114,000. The daily train density of passenger trains in 1896 was 4.5 and freight trains 9.1; a total of 13.6. * * * In 1907 the passenger train density was 11.7; freight, 17.0; total, 28.7. In 1908, the passenger train density was 12.5; freight, 14.2; total, 26.7. In 1909, the passenger train density was 12.1; freight 12.7; total, 24.8. * * * In 1900 the passenger train density was 6.9; freight, 11.1; total, 18.0. In 1901, passenger 8.3; freight 11.1; total 19.4." The basis of these figures from and after the year 1900 is "the actual statistics kept; we kept gross ton mileage after that date. I will say, by way of explanation, to make it entirely clear, that 'gross ton miles' means the weight of train and contents." The next column in my statement shows what the train density would have been had we not loaded our cars and trains more efficiently. In 1896, the train density, with no change in the freight train loads, would have been 13.6; in 1897, 14.6; in 1898, 15.8; in 1900, 18.6; in 1901, 20.5; in 1906, 34.4; in 1907, 37.6; in 1908, 37.4; in 1909, 38.1. The actual meeting points in 1896 were 46; in 1897, 51; in 1898, 59; in 1900, 81; in 1901, 94; (4125) in 1906, 164; in 1907, 206; 1908, 178; and 1909, 154. Assuming unchanged freight train load, the meeting points would have been, in 1896, 46; in 1897, 53; in 1898, 62; in 1900, 86; in 1901, 105; in 1906, 296; in 1907, 353; in 1908, 350; and in 1909, 363. In other words, the difference between the actual meeting points under the more efficient car and train loading in 1909 was 154, and the unchanged freight loading would have been 363, a reduction of 210 meeting points, practically.

51 hour freight schedule between Omaha and Ogden.

Referring to the 54-hour schedule of 1900, main line Omaha-Ogden, I have a statement of the schedule covering that movement showing their variations from and after 1900. (4126) In June, 1901, the freight schedule Council Bluffs to Ogden was 58 hours, 25 minutes; November 3, 1901, 60 hours, 30 minutes; December 21, 1902, 64 hours; January, 1903, 82 hours, 10 minutes; October,

1903, 74 hours, 20 minutes; November, 1903, 74 hours, 30 minutes. In October, 1907, 100 hours, 45 minutes. These figures represent schedule time. The schedule was lengthened in 1907 to meet the conditions that confronted us at that time. "We had this panic; we could not reduce expenses, we could not increase revenues; and the problem that confronted the management of roads was how to get satisfactory results without either increasing revenues or decreasing expenses—a pretty tough problem; but it was solved, as I have already shown, by more efficient car loading, more efficient train loading; and, whilst freight takes a little more time to get from Council Bluffs to Ogden, I showed in my testimony yesterday that the bonus paid to the public for that was $154,000,000 in about eight years. * * * Traffic density in 1907 attained its maximum up to that year. It was slightly exceeded in 1909, but it was the greatest in any year up to that time."

Train discrimination.

Uniform speed.

We made no schedule change in 1908—the schedule figures are the same today as in 1907. The faster you undertake to run some one particular train, the more you discriminate in its favor, the more other traffic has to suffer necessarily. The best operating conditions for moving the entire traffic between terminals in respect to speed and loading, is, as near as possible, uniform speed; and aside from operating difficulties the faster you undertake to run, the greater is the liability to accident, and the greater the uncertainty, because you have less of a margin to work on. If you work your locomotives and plant to maximum capacity, without any margin for contingencies—if anything happens you are thrown out. (4127) This 54-hour schedule was not in my time; I understand it was maintained. And we could maintain it now by practically sidetracking everything else and making it a preferred train; but we don't want to do that, it is not wise, and it is not right. Upon the speed of trains, I have prepared a showing with reference to the hauling power of the locomotives, and the increase of meets. (Defendant's Exhibit 105, facing page 4127 of the record.)

Chart showing hauling power of locomotives, and the increase of meets.

"The upper part of the diagram shows by a curve in full line, marked 'Relative Density of Trains,' immediately under the words 'Velocity—Miles per Hour,' the speeds from 10 up to 45 miles an hour. At the bottom of the sheet it shows the relative number of meeting points, increasing from 1, at the left hand, to 83, at the right hand. In other words, to move a given amount of traffic, if we follow that curve from the left up to the right, moving the traffic say at 10 miles an hour, the actual number of meets would be 1. If we take the same traffic and split it up into more trains and move it at 45 miles an hour, we would increase the meets to 83. A further disadvantage is shown in the bottom half of the diagram on the two lines marked 'Relative Total Weight of Train including Locomotive and Tender' and 'Relative Total Weight of Train excluding Locomotive and Tender.' Following the upper line from the left hand corner of the diagram shows that if the hauling power of a given locomotive be 100 at 10 miles per hour, it falls to 42 at 30

miles per hour; that is to say, the locomotive can haul only 42 per cent. as much of the load, including her own weight, at 30 miles per hour, as she can at 10. If the speed be increased to 45 miles per hour, she can only haul about 20 per cent. of what she can at 10. This explains why we have kept the speed of our trains low: firstly, because we did not want to run locomotives without hauling loads; we did not want to increase meeting points and impede the movement of these trains so we could not get them over the road, and we were confronted with the problem of how to show results from the traffic moved in the face of very large increases in the rates of pay to employees and in the prices paid for materials, without any increase in the rates."

The lower of the two curves, in the lower half of the diagram "is the same as the upper one, but it excludes the locomotive and tender. In other words, it would be the paying load, and it shows that if the speed is increased from 10 to 45 miles an hour that the locomotive will only haul about 10 per cent. of the weight that she will haul at the lower speed, after furnishing the power to (4128) haul herself and tender. In other words, her efficiency is almost gone. If the curve were run a little farther down she would have capacity to move only herself and tender and no load." The upper curve shows that if to move a given traffic at 10 miles an hour requires a density of unit of train, to move the same traffic at 45 miles an hour would require a density nine times as great.

Increase of speed lessens carrying power of locomotive.

With respect to a 54 hour schedule between Council Bluffs and Ogden: "Based on last year's traffic, when the daily train density was 12 passenger trains and 13 freights, or a total of 25 trains, the actual freight speed run was 17 miles per hour; the average train load was 700 tons of freight. Now, to increase that speed to the 54-hour schedule as compared with a 100-hour schedule, which means an increase in percentage of 85 per cent., would have required an increase from 17 miles per hour to 31 miles per hour. * * * Calling the power of a locomotive to haul freight at 17 miles per hour unity, at 31 miles per hour it would have been only 48 per cent. of unity." The expression of unity signifies 100. "I have already said that the weight of the train at 17 miles per hour was 700 tons. It would have had to be reduced to 336 tons for the higher speed, and the number of trains required to move the same traffic would have been, of course, as to passenger trains 12 and freights 27—a total of 39 as against 25 under existing conditions, and the number of meets would have been 2.43 times as many."

Effect of adopting a 54 hour schedule.

Assuming that the meets of the 25 trains are 100, the meets of the 39 would be 243. Double tracking has helped out the speed of trains to the extent that we have gotten in the double track. The double track is not continuous, but on the pieces we have got in it has helped immensely. Forty per cent. of the U. P. main line is double track, sixty per cent. is still single track, and the single track is the weakest point of the chain from a traffic point of view, and really limits the capacity of the road, but wherever we do get a piece of

Ratio of meeting points to number of trains.

Double track helps.

Only partially double tracked.

double track on that road it helps immensely. (4129) The fact that the road is double track only partially must be taken in connection with the fact that even that partial improvement is limited and discounted by the single track. I do not know of any other lines now maintaining as fast a schedule as 54 hours.

New York Central freight service.

"The New York Central moves most of its freight on the west side of the Hudson River, where it has the West Shore road; on the east side of the Hudson to Albany there is doubletrack; from Albany to Buffalo it has 4 tracks, 2 of which are devoted exclusively to freights. So they have absolutely no meets. The Lake Shore road, which is their connecton running to Chicago, for a considerable part of the distance has 4 tracks, and for the entire distance it has 2. The Pennsylvania has 4 tracks from New York to Pittsburg, 4 tracks for part of the way from Pittsburg to Chicago, and never less than 2. The New York Central's schedule on their through freights, freights that they turn over ultimately to the Union Pacific, is 60 hours from New York to Chicago, or, roughly, 15 miles an hour. And that is over a level track, a track of few curves, and a track where a freight train has absolutely no meeting points." That, I understand, is a merchandise freight schedule. I don't know whether the New York Central to Chicago for freight other than merchandise freight has a 100-hour schedule.

Comparison between New York Central and U. P. freight service.

"This is the schedule that I took that corresponds to the 100-hour schedule on the Union Pacific, which is the schedule on which we pull our Pacific Coast freight, and while the average speed including stops from the Missouri River to Ogden on the Union Pacific is only 10 miles an hour as against 15 on the New York Central, it is a vastly more creditable performance and a harder schedule to maintain and requires higher operating efficiency than the 15-mile schedule, because the Union Pacific freight has to be lifted at one point alone over an 8,000-foot mountain ridge, over the Rocky Mountains, besides a number of intermediate summits, and the New York Central freight moves from New York to Chicago practically on a water grade, and with a track for westbound freight and a track for eastbound freight, totally without handicaps from opposing traffic." (4130) As to the delay of train movement consequential upon the inspection required by the Federal laws, "we have taken the actual time of inspectors going over trains at the various inspecting points between Council Bluffs and Ogden, and out of the total time of 100 hours that we have for that run, 27 hours and 39 minutes are consumed in inspection. I do not mean to say that all of that is due to federal law, but a little over 6 hours out of the total are due to the extra time taken now as compared with the time it took before the law was so extremely enforced as it is at the present time."

Delays occasioned by new laws.

As between 1901 and the present time, the consumption of time is six hours and six minutes greater than it was then. As to the 16-hour law, "the effect of all these new laws has been to lengthen out the time. There are laws affecting the length of time that you can

keep animals in cars. If it is violated, even unintentionally, you have got to prove that you did it unintentionally, otherwise you have got a heavy fine. There is a law prohibiting working train crews over 16 hours. Of course every train crew is a self-constituted check on the road, every member of the crew is quick to report any infraction or supposed infraction of the law to the Interstate Commission inspectors, who are very numerous over the roads; heavy fines are the result of infractions, suits are sometimes instituted even if the carriers are totally blameless and they are put to the trouble of delaying trains on account of these laws, to be certain that they do not run up against fines. Formerly a slight defect in a car, that in no way made it unsafe to run was overlooked and the car was taken. At the present time even the slightest defect will prevent it, even though not rendering the appliance unsafe; requires the whole train to be stopped, the car switched out and sent to the repair track.

"At times a defect will develop in a car that left a terminal in good order—it develops on the road, and to comply with the law the train has to be stopped, the car switched, set out on a side track, and men sent out to repair it. We had an extreme case, where a locomotive left a terminal after proper inspection, with the air pump in perfect condition. The air pump gave out 15 or 20 miles from the terminal to which the locomotive was destined, the train was taken to the terminal, and a suit was promptly instituted because the whole train was not stopped and the locomotive detached and another one sent out from the terminal to take its place." (4131) I have some figures, comparative figures, showing the average distance a freight car was moved per day for the year ending June, 1909. "a memorandum here taken from the monthly reports of the Committee of Relations between Railroads of the American Railway Association, that publishes monthly the car movements of the different roads of the United States. For the year ending June, 1909, the average movement per day per freight car on all the roads in the United States was 22.1 miles; on the Union Pacific Railroad it was 41 miles, on the Oregon Short Line 31.8 miles; on the Oregon Railroad & Navigation Company 23.9, on the Pacific System of the Southern Pacific 32.7, and on the Sunset-Central lines 22.9."

Average movement per freight car per day.

The disparity between the U. P. mileage, 41 miles, and the Sunset-Central mileage of 22.9 is largely a question of the nature of the traffic. "The Sunset-Central has a number of important terminals, particularly tide-water terminals, which are the graveyards of freight cars. Custom, that in some cases has been made the law, the regulation of railroad commissions, gives the man who ships freight to tidewater an unusually long free time in a freight car. The Sunset-Central lines at New Orleans and Galveston, Port Arthur and Sabine Pass, have ocean terminals, and that interferes very much with their car movement. The Union Pacific does not reach tidewater, and a great deal of their traffic is delivered to them by connection at the east and west ends and is hauled through. Therefore they show somewhat better daily car move-

ment. The Union Pacific Railroad is in a large sense an intermediate carrier." Passenger trains in their operation interfere with the promptness of freight train movement and delivery vastly more than an equal number of freight trains, because the passenger is a preferred movement and the freight trains have to give way. Between Council Bluffs and Ogden in 1900 we had seven daily passenger trains; in 1909 we had twelve. Since 1901 the S. P. and U. P. together have had 1,178 new passenger cars, either purchased or under construction, being about one-half of the total equipment.

(4132) The average cost of a passenger car repair for the United States is $750 per annum. On the S. P. and U. P. Systems it is $1,000 per annum, and the present cost is about 40 per cent. more than it was in 1901. About two years ago both S. P. and U. P. adopted steel as the standard of construction for passenger equipment, and since that time nothing but steel has been ordered. We earn no more money from a steel car than from a wood car, and the steel car costs about 50 per cent. more than the wood. We stay on the track more than we used to, because we have got a better road than we used to have. A lot of this money we put into it makes it better and safer. We are giving the public more for the same money to-day than they used to get. Frequency of passenger service increased about 30 per cent. in the face of a number of new lines of light traffic.

Steel equipment adopted as standard for passenger service.

As to the percentage on the Council Bluffs-Ogden line, 1901, and subsequently, it increased about 45 per cent. and the character of the trains was entirely different. We had more of these high-grade luxurious trains with observation cars and electric lights, and dining cars, and all modern improvements. In 1901 we owned one observation car; now 45 are either owned or under contract for early delivery. In 1901 we had 39 dining cars; now we have running or under contract for early delivery 145. These luxurious trains are giving better service, as shown by the receipt of commendatory letters. Sometimes, when the trains are not on time, we get the reverse, but the majority are commendatory, and we have every reason to believe that the public is well pleased with the service. (4133) "In 1900 the time made by the mail between Chicago and San Francisco was 69 hours and 45 minutes; in 1905, 59 hours and 43 minutes; in 1909, 65 hours and 38 minutes, but in 1900 the mail reached San Francisco late in the afternoon—too late for that day's delivery. It lay over night and was delivered the next morning. At the present time the mail reaches San Francisco early in the day and is delivered the same day, so that the actual reduction in the time of the mail, counting its delivery as the delivery to the person addressed, is from 12 to 15 hours. * * *

More high grade, luxurious trains.

Public pleased with the service.

"The change in the time of these trains was practically forced on the carriers by the post-office department by excessive and arbitrary fines whenever the schedule was not made. In other words, to come back to what I said about freight trains, when too fast a schedule is undertaken and you haven't a margin, you don't make

Schedules of mail trains.

it. In the case of the freight trains the penalty was, of course, diversion of freight and dissatisfaction on the part of our patrons. In the case of the mail there was not only dissatisfaction on the part of the public, but excessive fines were put on by the Department, and when we found that the schedule could not be made certainly without paying these high penalties, we simply lengthened out the time. On two of the mail routes only in one year the fines aggregated $62,330, or about 20 per cent. of the entire mail earnings." On account of the different arriving times, there has been really a decrease in the time of mail delivery, from 1905 to 1909, counting the delivery of the mail up to the time that it is put in the hands of the person addressed.

Chart showing increase in safety of passenger service.

I have a charted showing for 1909, as compared with the earliest available date, the increase in the safety of passenger service. (Defendants' Exhibit 106, facing page 4133 of the record.) "The earliest date of which data were available on the Union Pacific system was 1904, and the comparison on Exhibit 106 is made between the years 1904 and 1909, and shows on the Union Pacific a reduction in the number of train accidents per million miles run by locomotives from 20 to about 9.2, on the Oregon Short Line from 20.1 to 14.3, on the Oregon Railroad & Navigation Company from 15.1 to 6.5, on the Pacific System of the Southern Pacific Company from 29.4 to 24.1, on the Sunset-Central lines from 22.7 to 15.3." (4134) In explanation of this improvement of service: "To begin at the bottom, the better roadbed and track; next, to what runs on the track—better equipment; next, the greater attention paid by the staffs on all of the lines to operation and maintenance, and to the block signals. Those are the principal causes. That, however, would be included under the efficient management to which I have alluded. And also to the constant aim to move the traffic in a minimum number of units, to reduce meeting points, and to reduce the possibility of either head-end or rear-end collision; because when we speak of meeting points increasing by the square of the number of trains, the possibility of tail-end collisions increases, not quite so fast, but it increases directly as the number of trains increases; in other words, with one train running each way on a given section of track there can be, necessarily, no tail-end collision. If you have two trains in each direction, there can be two tail-end collisions.

Constant effort is to move trains in a minimum number of units.

"In other words, the rear train of the two can collide with either of the preceding trains. If there are twenty trains in each direction, any one of 19 can collide with those in front. So with 20 in each direction you will have 38 possible tail-end collisions in addition to the head-end collisions which are proportional to the square of the number of meets. So that the reduction of the number of units moving over the track has a very large influence on the item of accidents from collision. * * * This question of accident is one that at all times is receiving the most careful study on the part of general managers, general superintendents and all officers who are charged with the movement of traffic or whose management would be respon-

Effect of reducing number of train units.

High speed trains and accidents.

sible for accidents; and a special study made by the general superintendent and general management of the Union Pacific proper for the year 1906 showed that they had 14 accidents to passenger trains, 10 of which (or 71 per cent.) occurred to the limited trains, the very high speed trains. There were 10 of them. There were 62 other passenger trains on the slower schedules and they had only 4 accidents."

Relation between construction of equipment and train speed.

The physical construction of the freight car and freight locomotive is related to the question of freight train speed. The freight car, to begin with, circulates freely. "The passenger cars, in a train, as a rule, belong to the road running the train; they are maintained at a very much higher standard and are built for higher speed than the freight cars. The freight trains, as is evidenced by an examination, are made up of cars from roads all over the country, and despite the inspection that you can give at junction points, you are liable to get cars with defects in them, that will be brought out by running them at high speed. The passenger trains are equipped with steel wheels, the freight cars with cast (4135) iron wheels. The freight locomotives, as a rule, are not built for as high speed, they have smaller driving wheels; and, again, regardless of the size of the driving wheel and the policy that I pointed out before, any great increase in speed affects the hauling capacity of the locomotive so rapidly that at present rates you could not possibly afford to run freight trains at any very high speed."

As to freight speed Harriman Lines have struck a happy medium.

As to the present freight speed on the U. P. and S. P., regard being had to safety of operation, "I think—and I base my opinion on the opinions of my associates in the operation of these roads —that we have about struck a happy medium. We seem to please our patrons quite well. Some times we run against a fellow who is disgruntled, and I have no doubt justly so, but I mean the general run of people are satisfied with our service, and when we have done that, when we are serving the public satisfactorily and at the same time serving the owners of the property satisfactorily, and obeying the law, we think we are doing fairly well.

Public satisfied.

Taxes.

* * * In 1901 the taxes per mile of road on the Union Pacific were $225, in 1909 $424—an increase of 89 per cent. On the Southern Pacific, in 1901 $206 per mile, in 1909 $393 per mile—an increase of 91 per cent. Or if we put those figures in dollars, the Union Pacific system paid last year $2,570,000 in taxes. * * * It paid to its station employees $2,257,000, and to all of its train men $2,057,000; to all of its locomotive engineers $2,255,000; for renewing all the rails and ties $2,009,000." Since the year 1901, the credit of the S. P., its physical development, its economies and improvement of service "have increased in the most marked way. These numerous charts that I have given in regard to the improvements of the road show what they have been since 1901; they show its increased capacity to move traffic, and the increased safety of operation." I have called attention to the immense expenditures made for the

Most marked development of S. P. since 1901.

improvement of the Southern Pacific property since 1901. Before that time we did not have much money; we were poor.

(4136) I have a revenue chart comparative of the U. P. with the G. N. and N. P., and of the S. P. with the Atchison—also with roads generally. (Defendants' Exhibit 107 faces page 4135 of the record,—the authority for the chart being the annual reports of the Company.) It "shows in graphic form the growth of revenue per mile of Southern and Union Pacific systems and of a number of other eastern and western roads. Between the fiscal years ending June 30, 1901, and 1909, the Union Pacific gross earnings per mile of railroad operated increased from $7,525 to $12,761. * * * The Northern Pacific increased from $6,384 to $12,071; the Great Northern from $5,450 to $7,900; Southern Pacific from $8,453 to $11,515; Atchison, Topeka & Santa Fe from $6,977 to $9,624. * * * The Denver & Rio Grande from $7,021 to $8,238; the Chicago & Northwestern from $7,826 to $8,642; the Chicago, Milwaukee & St. Paul from $6,506 to $7,974; Chicago, Rock Island & Pacific from $6,912 to $7,623; the Chicago, Burlington & Quincy from $6,404 to $8,556; the St. Louis & San Francisco from $6,032 to $7,274. * * * The Illinois Central increased from $8,754 to $11,804; the Wabash from $7,438 to $10,287; the Baltimore & Ohio from $14,649 to $17,745; the Lehigh Valley from $19,302 to $22,922; the Lake Shore & Michigan Southern, for the year 1900 compared with 1909, from $20,746 to $27,492; the Michigan Central, for the years 1900 to 1908, from $10,232 to $14,272; the New York Central & Hudson River Railroad, between 1900 and 1908, from $19,368 to $23,500; the Pennsylvania Railroad, between 1900 and 1908, from $27,602 to $33,878; the Southern Railway, between 1901 and 1909, from $5,230 to $7,278."

Chart showing growth in revenue per mile of Harriman lines and of other eastern and western roads.

The use of the year 1900 in some of these instances means the calendar year, which the roads in question use, and 1908 was the last of their reports that we have. The addition of new mileage to the U. P. and S. P.—within the period named, 1,000 miles to the S. P., and 500 to the U. P.,—is reflected in these statements of revenue by its reduction of the earnings per mile. (4137) There has been an improvement since 1901 in the service on the Sunset route. "In the passenger service the character of the trains has been improved, observation cars put on, and in general the standard of service has been raised. In freight train service, the regularity of the service has been improved. The time through from New York to San Francisco is practically the same to-day as it was then. There had been a shortening of service on that line, as on others, up to October, 1907, when I think we added a day to the through time for the same reason that we added to the schedules on the northern lines, that is to say, to permit us to more efficiently load our trains and locomotives."

New mileage.

Improvement in passenger service.

The freight train service has been improved by transferring freight at Galveston. "About 1900 or 1901 the terminus of the New York line, that served California, was changed from New Orleans

Transfer station of Sunset line changed from New Orleans to Galveston.

to Galveston. At New Orleans (Algiers is really where the terminals were) our room was limited; there was more or less delay with the fogs, and in high water there was the rapid current of the Mississippi River, navigating 110 or 120 miles from the jetties up to New Orleans, and the line between New Orleans and Lafayette, Louisiana, which takes in the sugar district, has such very heavy traffic on it at the time the sugar crop is being harvested that there was considerable difficulty in getting the freight trains through; there was delay and congestion, and we were confronted either with spending a great deal of money at Galveston to make a new terminal or to double-track the line from Houston to New Orleans. It was cheaper, and we considered a more satisfactory solution of the difficulty, to transfer the terminal to Galveston. We got ample room there. The range of the tides is much less there than the range between high and low water in the Mississippi River. That was a very embarrassing factor at Algiers. The range there is about 21 or 22 feet between low water and high water. At Galveston it is only 7. Having very much more room and less of this variation in the height of the discharging port of the vessel, we could make the transfer quicker and better, and it was a decided improvement in the through service, by transferring the terminus to Galveston."

We had reduced the time to El Paso from New York, a little bit up to 1907, but we took more time then to load the trains, so that the through time now to Pacific Coast is about the same as in 1901. (4138) The ships, however, that we have had since 1901 are faster than the old ships. The through Sunset time is a little more than on the Omaha route, the mileage is very much greater; the speed is a little bit greater. In 1900 the time from New York to San Francisco averaged 15 days and 7 hours; in 1909 a check of the cargoes of 34 steamers covering 1,200 or 1,390 cars was 15 days and 5 hours—2 hours less or practically the same. The Sunset route, steamship New York to Galveston, thence rail to San Francisco, is 2,233 statute miles ship distance; rail miles 2,186—total 4,419; average daily speed 295 miles. The through distance to California all-rail by U. P., S. P. and Lake Shore is 3,258 miles, average daily speed 251 miles; and by the Atchison and the Lake Shore 3,558 miles, average daily speed 264 miles. The distance Omaha to San Francisco is 1 786 miles. 168 carloads of freight that moved to San Francisco in May, June and July, 1909, averaged 9 days and 3 hours, 200 miles per day

Sunset service.

(4139) This would be 8 1-3 miles per hour, excluding all delays. New York to San Francisco is 3,258 miles on a 13 day schedule, or 250 miles a day—same as Santa Fe schedule. The Galveston terminals cost $2,118,000. I have a blue print of the same scale of the abandoned Algiers terminals and the substituted Galveston terminals. (Defendants' Exhibit 108, Algiers terminal blueprint; and 109, Galveston blueprint, by stipulation omitted from printed record but producible at argument.) These blueprints are on the same

ocks at
lgiers and
alveston.

scale, 100 feet to the inch. "The Algiers docks had a frontage of 1,755 feet, accommodating four large steamers. 71 freight cars could be placed for unloading at the steamers. The capacity of the yards serving the docks was 281 freight cars. At Galveston we have 6,235 feet of dock front; 14 steamers can be accommodated; 547 cars can be placed opposite these steamer-berths for unloading, and the yards serving the docks have a capacity of 1,225 freight cars. I have here separate photographs of these docks which I did not have yesterday when I offered the other photographs. These were in the mails and I had not received them yesterday." (These photographs in book form are marked Defendants' Exhibit 110, with same understanding as to Exhibits 108 and 109.)

Tonnage of Sunset fleet.

(4140) In 1900 the tonnage of the Sunset fleet was 43,478, in 1901, 56,554, in 1909, 87,568—an increase in 1909 over 1900 of 55 per cent. "In 1901 we added 4 steamers to the fleet, aggregating 18,448 tons, at a cost of $2,226,000. In 1902 we built 2 steamers, aggregating 9,664 tons, costing $1,092,000; in 1906-7 we added three steamers, aggregating 20,196 tons, costing $3,113,000. We have under contract at the present time, for delivery in the latter half of this year, 4 large freight steamers, aggregating 26,000 tons, to cost $2,350,000. That is to say, from 1901 up to and including the vessels for delivery within a few months, have been added or will be added 74,308 tons, at a cost of $8,782,000. That will increase the total tonnage of the coast fleet from 87,568 at the present time to 113,568. * * * The vessels added in 1901 were 15-knot ships; the New York steamers in the fleet before that were 12½ and 13-knot ships; the vessels added in 1906 and 1907 were 16-knot ships, and the vessels under contract at the present time are 16-knot ships. Or, expressed in another way, the older vessels of the fleet took an average of about 160 hours between New York and Galveston, the next lot of vessels 136 hours, and the last 3 completed, as well as the 4 now under contract, will take about 119 to 120 hours."

New boats.

Improvement in lighterage service.

Prior to 1901 "the lighterage service in the port of New York was conducted by outside concerns under contract. Of course the ability of the company to control tonnage is largely dependent on the efficiency of this terminal service. The lighterage service with the steamship is a good deal like the switching service at a terminal with a railroad. And since that time we have added 5 tugs and 42 lighters to the coast plant, which have very greatly increased its efficiency and its ability to control the traffic. * * * In 1901 we owned 1 tug, 150 tons burden; in 1909 we owned 5 tugs, 780 tons; 3 barges, 1,078 tons, and 39 lighters, 10,259 tons." Since 1901 "we built the 'Momus,' the 'Antilles,' and the 'Creole.' These are very large vessels, 16 knots, and with the very finest passenger accommodations."

Profile chart of line from Portland via Huntington compared with line via Roseville.

(4141) These three vessels were built in 1906-7. I have a profile chart of the rail route from Portland via Huntington, and via Roseville to Ogden and Granger. (Defendants' Exhibit 111, with same understanding as in case of Exhibits 108, 109 and 110.)

"Defendants' Exhibit 111, in its upper half, shows profile of the line from Portland to Granger via Ashland, Oregon, Marysville and Roseville, California, Truckee, Ogden, to Granger. It gives the mileage and the elevations to be overcome by a train carrying freight between the two terminals. The lower profile shows the mileage and elevations to be overcome in moving freight from Portland to Granger via Huntington, Oregon; McCammon, Idaho; Montpelier, and Granger; and it also shows the profile from McCammon to Ogden. In the table marked 'Physical Characteristics' are shown for each of these routes the total rise and fall in feet, the total degrees of curvature, the actual distance in miles, with the equated level distance in miles to be overcome between the various termini, and the equated level length in miles being the mileage additional to the actual distance to offset the work done in lifting the loads over the grades and in forcing them around the curves, the equation being made according to well-known engineering formula. In other words, it is impossible to compare two routes varying in grades and curvature unless, so to speak, they are reduced to a common denominator, which is the resistance of pushing the load over a straight and level track.

Relation of grade to distance.

"In overcoming a foot of grade the same work is done as in hauling the load over 344 feet of straight and level track, and in pushing the load through a curve of a little more than a mile in radius, or what is known as a one degree curve, is equivalent to hauling the load on a level over 7.2 feet of track. That enables the two routes to be compared on the same basis. * * * The route from Portland to Granger via Roseville and Ogden has a total rise and fall of 40.364 feet. * * * Total degrees of curvature 86,019, actual distance in miles 1,487.3, total equated distance in miles 6,164. The route from Portland to Granger via Huntington and McCammon has a total rise and fall of 21,040 feet, 35,705 degrees of curvature, actual mileage of 945.3, and equated mileage of 3,493. * * * (4142) The first line described has an excess of 19,324 feet of rise and fall, 50,313 degrees of curvature, 542 miles of actual distance, and 2,671 miles of equated distance against it. On the route from Portland to Ogden via the Southern Pacific's lines, the total rise and fall is 36,020 feet, total degrees of curvature 80,547, actual distance 1,341.2, equated distance 5,552 miles. From Portland to Ogden via Huntington and McCammon, total rise and fall 19,376 feet, 32,334 degrees of curvature, 865.2 miles actual distance, 3,203 miles equated distance. Line No. 3, from Portland to Ogden, via the Southern Pacific Company's lines, has an excess of rise and fall of 16,644 feet, 48,213 degrees of curvature, 476 miles actual, and 2,349 miles equated. * * *

Physical resistance.

"There is one thing that it is necessary to explain this, that I did not touch on here. What I have given so far has been the relative resistance, the physical resistance, the traffic going over these two routes. The grades on the Southern Pacific line are very much heavier—the rate of grade—than on the other, and the expenses of

moving the freight are not given on the diagram, but for an understanding of it should perhaps be added. The cost of moving a ton of freight from Portland to Ogden via the O. R. & N. and O. S. L. lines, or via Huntington, would be $2.69 a ton, Portland to Ogden via the Southern Pacific lines $5.53, from Portland to Granger via Huntington and Montpelier $2.75 a ton, and from Portland to Granger via the Southern Pacific Company and Ogden $5.94 a ton." The grades shown upon the profile are from 5-10 of 1 per cent. to 2 per cent., from 2 per cent. to 3 per cent. and then 3 per cent. and over, and the lengths of those grades are shown in the tabulation. These profiles were made to show the relative obstructions to moving traffic, and the relative costs for the two routes. (4143) Longer lines, with more difficult grades, might, I suppose, compete with shorter water-level lines on the same rate up to a certain point, but there may come a point where the competition—with all respect to that term, which has been the subject of a good deal of misunderstanding apparently—would be impossible.

U. P. a water level grade Omaha to Julesburg.

The U. P. from Omaha to Denver, or to Julesburg Junction has practically a water level, following the Platte River. The grade from Julesburg to Ogden and Salt Lake is practically 90 feet, and the height above sea level, roughly 8,000 feet. The D. & R. G. and the Rio Grande Western grade over the Rocky Mountains is greater than the U. P., about 10,000 feet at Leadville, I think—2,000 feet higher than the U. P.

Grades on New York Central and Pennsylvania lines.

(4144) The D. & R. G. and R. G. W. operates there, has been operating for 20 years after a fashion. The New York Central from New York to Chicago is practically a water-level road. The Pennsylvania goes over the Allegheny Mountains, putting on extra engines on the grade from Altoona to the top of the mountains. The Pennsylvania competes successfully I think with the New York Central in time and in rates, and generally. It runs an 18-hour train, as does the New York Central, to Chicago, a cut of five hours in the last ten years, but I think there are other trains of about 23 hours. 1893 was the year of the great panic. The beginning of it was a period of great railroad depression, but there was a gradual recovery from 1893 up to 1896 and 1897—considerable recovery towards the end of the period.

Effect of panic 1893.

(4145) At the time of the panic of 1893 many western railroads went into the hands of receivers, the U. P. and its allied lines, and the Santa Fe and N. P., and many eastern and southern lines. The great improvement in business has been roughly, during the last ten years up to 1907 when we had the panic—a period of unusual expansion. After the panic of 1897, on, and from 1900 on, the railroads that had the money commenced great development in the improvement of their properties: the S. P. not until some time later, about 1901. Between 1900 and 1907 the roads spent a great deal of money in improvements.

Expenditures for betterments by other lines

(4146) I would say the Burlington had done something in the way of reducing grades. I understand the Pennsylvania graded a

new line over the Alleghenies; I think they spent a great deal of money in the same class of development as our lines. I understood—as gossip—they were spending $150,000,000 right here in New York. I understand the Santa Fe has spent money freely on its property. It is in good shape, but I have not been over it for eight or ten years. I do not know that the capital expenditures on that system have exceeded $125,000,000, but that seems small as compared with what we have spent.

Expenditures by S. P.

(4147) The S. P. alone spent over $250,000,000 and my recollection is that its mileage is about the same as the Santa Fe between 9,000 and 10,000 miles. I show in Exhibit 73, in round figures, other than the construction of new lines and terminal property, $127,000,000 expended for betterments and improvements on the S. P.; I cannot answer offhand as to what the new lines and terminal properties of $114,000,000 are. I think I said we purchased and built a thousand miles of railroad, but do not know whether that includes the lines in Mexico. I can furnish you a statement of what the $114,000,000 cover.

New lines.

Expenditures by U. P., compared with those made by other lines.

(4148) The U. P., including new construction, was 121 million, 57 million being new construction. The total mileage of the U. P. and allied lines, in round numbers, is 6,100 or 6,200; total expenditures for improvements 64 or 65 millions. As to the Santa Fe expenditure of 128 millions, I would like to know what that covers; it may cover a lot of new lines; we must be certain of getting in the same items before we make a comparison. I understand the G. N. and N. P. have spent a great deal on grade reduction. I do not know that all of the leading railroad systems in the country since 1900 and 1902 spent enormous sums of money in all the classes of improvements that we have spent money for—I don't know anything of the kind, on the contrary, as to a good many I know that they have not. (4149) I suppose the total capital invested in railroads has increased enormously in ten years, because there have been a great many improvements and a great deal of new mileage, but when it comes to capitalization per mile, I doubt whether there has been any great increase. My recollection is clear that the capitalization per mile on the roads of this Company for the past ten or fifteen years has not increased very much.

402 per cent increase in double tracks.

In Defendants' Exhibit 100 I state that the mileage of the additional main tracks has increased between 1901 and 1909, on the main line of the U. P. and Central Pacific roads 402 per cent—from 96 miles of double track in 1901 to 482 miles in 1909. "Q. What did you put that percentage in there for—482 per cent? to make it sound well? A. No. I cannot conceive of any other way by which you could convey to any one an intelligent idea of what the increase had been, except that way. * * * (4150) Q. If you will look on your exhibit to 'miles of track protected by automatic signals'—you had 2 miles, in 1901, of track protected by automatic signals? A. Yes. Q. And in 1909 you had 2,165 miles? A. Yes. Q. What

is the percentage of increase there? About a thousand per cent., isn't it? A. Roughly, about a thousand per cent., yes.

"Q. Why didn't you put that percentage in after that? A. I called attention in my testimony yesterday, that where you come to the miles of rail 80 pounds or over, the amount being less than will reach to the hundred or basing line, you will find a little note, in the second column, headed 'Relative,' at the top, on the line marked 'Miles of rail 80 pounds or over,' that we give the per cent. of the total—just to avoid such questions as '2,000 per cent. increase.' I have no doubt we put it in there just for that purpose. That is why I have been so anxious, when you endeavored to get me to admit that the Atchison, Great Northern, and other roads' expenditures were quite as much as ours, that you should let me know exactly what you were quoting; in other words, whether the figures were comparable or not. To understand each other, we must know that we are referring to exactly the same thing. Q. Why didn't you make the percentage of increase in miles of track protected by signals compare with the percentage of increase of double track, so we could see what percentage of increase there was in double track and what percentage of increase of automatic signals? Wasn't it put in there so that your counsel could point to big increases, of four and five hundred per cent—which don't mean anything at all? A. No doubt you think so. But counsel had absolutely nothing to do with the preparation of this statement. And after all, I want to say this again, and to say it with all the emphasis I can, that I do not at all understand the drift of the questions, or why a percentage, whether it be a thousand, ten thousand, or ten million per cent, does not convey to the mind a mathematically accurate impression of the increase. I don't know of any other way to put it."

Comparison with other lines.

Statement of increase in percentages only accurate way to express them.

I testified substantially that between 1897 and 1908 the increase in the cost of labor on the U. P. system had been 20 per cent. and on the S. P. 25 per cent.; and all classes of labor 17 per cent. (4151) I selected 1897 as the first year for this comparison because this statement had been drawn up for evidence in one of the other numerous cases—the Salt Lake case—in which we were all cited to appear to make explanations of operations; and it was continued from that date to this—simply added on to. The figures, I think, for 1908, came out after that, and were added to it. I suppose I have the records of it for each year. I will state the question that was involved in the Salt Lake case "in very general terms: Why, with the large business the Union Pacific had done, the net earnings (I think) had not been turned over to the public by a great reduction of rates? Q. The question was upon the reduction of rates was it not? A. That was about it."

1897 taken as first year for comparative statement of increase in cost of labor.

I think the question I was called on to testify about was generally where the net earnings come from, how they had accrued, and what benefit the public had gotten through the large capital expenditures on the U. P. I don't know what the question at issue was; there are so many, and we are hauled up so often that the layman

Why rates were not reduced.

cannot keep track of that. The object of getting up the statement was to show why rates had not been reduced, because every expense had been increased, everything that we bought had increased in price, and that which we had to sell remained (4152) stationary; and the public got the benefit of the difference which I have valued here in money, for the U. P. at about 63 or 64 million dollars in eight years—that information I did not have at Salt Lake—I wish I had had it.

Why year 1897 was used.

As I understand it, according to the theory of this case, we began sinning in 1901, so having all the statistics worked up as far as we could, we began in 1901. As to taking 1897 instead of 1900, this was a statement of comparative prices of labor and commodities already worked up, and considered to be interesting information in this suit, showing the trend of prices of labor and materials, and it was not worked up de novo. That the prices of labor, material, and everything, were higher in 1901 and 1900 than they were in 1897, was exactly the reason why in the Salt Lake case 1897 was selected. At Salt Lake we were endeavoring to show the handicap under which the road had been operated, and we took the list of prices in 1897, and that statement was brought up and introduced in this case. 1897 was the lowest in the list of prices I have got here from 1890 until 1907, and for that reason, and that reason exactly, it was selected as an exhibit in the Salt Lake case (4153)—to show to what extent our expenses had increased through rises of prices of wages and material.

Exhibits which show saving to the public.

Defendants' Exhibits 67 and 68 are, one a chart, and the other a typewritten statement showing the rates and savings to the public through non-raising of rates. "Defendants' Exhibit 68 shows, in the third line, the relative prices of labor and material for the years from 1901 to 1909, inclusive, 1901 being used as the basing year, or 100. The figures show the increases in percentages of cost of labor and material. Line 5, Union Pacific system, shows the average revenue per ton mile, actual, not relative. Line 6 shows what the revenue per ton mile should have been to have offset the increased prices paid for material and labor. The difference between the actual rate obtained and the rate that we should have obtained to offset these increased prices, we say, has enured to the benefit of the public. * * *In other words I applied the same percentage of increase to the rate that we should have liked to have gotten; the same percentage in the increase of rate that we had to pay for material and wages."

Railroads should be permitted to raise rates to meet increased expenses.

I made up the table to "show that if the railroads had been treated reasonably and had gotten a square deal, and if the public and the authorities had treated them as they do ordinary corporations, that they could have expected, and had every right to expect, that when every expense that they had incurred had gone up a large percentage, that rates should have gone up; if not in the same percentage, at least should have gone up with the increase in wages and material.

(4154) But the railroads being treated entirely different from any other interest, when they were confronted with the panic of 1907, and some suggestions or hopes of raises in rates were indulged in, it was very evident that it was absolutely impossible to get a raise in rates; and when it was suggested that the wages should be cut, every interest in the country, up to the highest, was arrayed against the railroads and they were told they could not cut wages. Therefore they were reduced to working out their own salvation, which they did." From 1906 I think the U. P. has paid 10 per cent. on its common stock, but when you take the lean years with the fat ones, the dividend does not begin to average that. In 1907 I said we were obliged to increase the time because of the hard times of 1907. I think we increased our dividends in 1906 and paid 10 per cent. that year, and in 1907—why shouldn't we? Since the reorganization of the U. P. in 1899 I think its net earnings—its surplus increased every year, I hope it is so; its dividends have not been very largely increased. I call 10 per cent. a moderate dividend in comparison with 16 to 24 per cent. paid by National banks, and as compared (4155) "with 12 or 13 per cent. paid on farm values, and with returns paid on mercantile concerns of such size that the witnesses were ashamed to name them in Salt Lake. I do not think that 10 per cent., six of which was really on railroad operations and the other four on investments, as I understand it,—I do not think that is out of the way, when you take into account the risks of the early days, and the lean years with the fat years; because, strangely enough, railroads are treated this way; that complaint is made when they have a prosperous year, and, when they have bad years, we have the public, the commissions, the administration, even, against them; they do not want to accord them any relief when they have any hard times, they are simply told 'sink or swim, it is none of our business.'" As to the usual dividends of railroads in this country, I think the Interstate Commerce Commission shows it is only 4 per cent. (4156) Taking the consolidated statement, U. P. and auxiliary companies, the annual report June 30, 1899, shows gross receipts from operation $34,394,000, net receipts $13,942,000; the report for the year ending June 30, 1909, shows gross operating revenue $78,750,000, net income—revenue over expenses and taxes—$38,234,000. The net earnings were substantially $38,000,000 in 1909, and $13,000,000 in 1899, substantially three times as much in 1909. It was during those years that there was this great increase in cost of labor and material.

Taking lean years with fat ones, dividends have not been large.

Comparison between railroad dividends and those paid by banks and others.

Usual railroad dividend 4 per cent.

Gross and net earnings of U. P.

(4157) In 1899 the ratio of expenses to operation was 57.6 per cent., and in 1909, 47.19 per cent.—we had succeeded in reducing operating expenses, earning a dollar of money practically 10 per cent. There was a slight decrease of rates between 1899 and 1909. I have admitted already that whilst we should have liked to have gotten the same increase in percentage, we did not expect to—but we did expect that we would get some increase in the rate to make up for these losses. "The examination of two years is misleading.

Ratio of expenses to operation.

Result of deferred expenditures.

The fact is that in 1908 and 1909 all roads in the country were still skimping their expenses to make showings; in other words, there were deferred (4158) expenditures. 1908-9 was an unusually low year for expenditures. The previous year 1907-8, instead of showing a ratio of 47 per cent. showed a ratio of 54 per cent.—over 10 per cent. higher than 1909. In other words, there is a hereafter which we have got to meet. And all of the roads, after this panic of 1907, which was one of the worst for the railroads that they ever knew, had to do everything possible to meet these increases in material and labor, because there was no other way to meet them than by deferring expenditures and by increasing efficiency. * * *

Extent of deferred expenditures.

"The fiscal year 1908 was 54, and in 1909, 47. In other words, the difference shows the extent to which expenditures had been deferred. It is notorious that every road, under the stress of these hard times, with one strong influence opposing reduction of wages and other strong influences opposing increases in rates, was, to use a vulgar expression, between the devil and the deep sea; and they had to work out their own salvation. They worked that out by more efficient management, and by deferring to some more propitious day or more prosperous time expenditures that could be deferred." (4159) October 1907 was high-water mark for gross earnings. For the year ending June 30, 1908, there were two or three months of heavy gross earnings with heavy expenses, followed by eight or nine months of depression after the panic of October, 1907. The year ending June 30, 1908, was the bad year. The year preceding—that is, the year ending June 30, 1907, was fairly good. Reading from the annual report for the year ending June 30, 1908, gross earnings of U. P. $74,422,776.81; year ending June 30, 1907, $74,656,152.11—this leaves out revenues from outside operations. The decrease on the gross operating revenue between those years for the U. P. System was $233,000.

Prosperity and panic.

Slump in net earnings.

(4160) That was not a big slump, but when you come down to the revenues over expenses and taxes, there was a slump of $2,182,000—that is what I mean by a big slump—in the net revenue. The net revenue for 1908 over operating expenses was $31,900,000, as it has been read off, from which 10 per cent. was paid on capital stock after interest and fixed charges with a large surplus; but with other industries, making two or three times as much, alongside of that. Averaging the years, it was very moderate, very much less than that. I cannot say as to all railroads, but it is a general fact that if you are operating with reasonable economy, a very large increase of traffic—unless, as in 1907, it be so great as to congest you, ought largely to increase gross and net earnings.

Cost more than $1.00 to earn $1.00 in early part of 1907.

In the first three or four months of 1907 it cost considerably more than a dollar to earn a dollar, and taking the whole year together it cost 54 cents to earn a dollar. The U. P. gross earnings have a little more than doubled as between 1899 and 1909.

(4161) I suspect the tonnage over these roads has more than doubled since 1899. Improvements, such as cutting grades, taking

out curves, improved larger engines, larger cars, and other large expenditures were made in order to handle traffic cheaper and make more money at the same rates. "But as it figures out, whilst we did not have that object in mind, it enabled us to be very, very charitable, when the stress of 1907 came. That terrible panic that struck us, you know, about that time, hurt the public, hurt the railroads. The railroads had reached the high water mark in expenditures in October, 1907; such a high water mark that it was costing them a great deal more than a dollar, in the first months of that fiscal year, to earn a dollar; and when they were subjected to the stress, they rendered the public better service than they had before and relieved the public of the necessity of paying more when the railroads had to pay more for material and labor. In other words, in the eight years, all together, they turned back to the public $154,000,000."

Improvements were made so as to handle traffic cheaper.

Panic hurt public and railroads.

Public were given better service without paying more.

There is not an absolute uniformity as to the speed of all freight trains. I testified as to the time of certain trains carrying Pacific Coast business, would not call them fast, would not call them slow. (4162) About 1900 the train, Council Bluffs to Ogden, making the S. P. connections, was scheduled at 54 hours; in June, 1901, it was 58.25, and in November 60 hours 30 minutes. In 1907 it was 100 hours. (4163) It would not be fair to make up a statement showing reduction of all freight trains from 100 hours to 54 hours if we never had but one freight train running 54 hours. "But I do not recall having made such a statement. Possibly in the testimony I may have said what the effect would be if there had been a large increase in the speed of trains involved in a 100 hour schedule up to the speed in a 54. I may have said that, simply to illustrate what the relation of increased speed to meeting points was; I think I may have said that. It was said in a great many different ways. But I did not mean to be understood by that, that all of our trains were run at any such speed, or at a uniform speed, because I do not believe it is the case now, and I do not believe it was the case then."

Speed of freight trains.

Relation of increased speed to meeting points.

The Council Bluffs-San Francisco line was shortened on the S. P. about 50 miles; on the U. P., as I am informed, 40 miles. (4164) We have improved the grades very much, taken out curves, reduced grades, have a better track and better power than in 1899 or 1900. I don't think our passenger trains are slower. (4165) The Sunset freight trains carrying steamer freight made a slightly faster speed per hour than the trains on the Council Bluffs-San Francisco line. (4166) I do not know personally whether the passenger trains are run as fast now as they were ten years ago, but all I do know is that when we satisfy the public and give them the service they want, I dismiss the whole matter. I know that the service is satisfactory to the public. I understand the Sunset Limited train to be a train that ran three times a week, a high-grade train on the Sunset line. (4167) I think the Santa Fe have two high-grade trains, one of which runs daily, and the other three times a week—

Grade and curve improvements.

Satisfied when people are satisfied.

years ago, but the last time I looked into the Santa Fe schedules my impression is they had two trains. They had a daily limited train, and they have since put on one three times a week. The Sunset Limited train, three times a week, was taken off a long time ago. I am quite certain the present train is not as fast as the other, because the first train was taken off because it could not earn its axle grease, perhaps that is an exaggeration—it was a money-losing proposition and we took it off.

Sunset Limited did not earn expenses.

New lines constructed by S. P.

(4168) I have a list here of the new lines, the principal ones, constructed on the S. P., covered by the $114,000,000 expenditure. I cannot give the mileage or cost. I picked out the principal items. I had only a little over an hour to pick these out: "Southern Pacific Company: Principal new construction built or acquired during eight years ending June 30, 1909. In Louisiana, from Cypremort to Weeks Island; Raceland to Lockport; Lafayette to Port Allen; Arnaudville to Port Barre; Bayou Sale to South Bend; Gueydan to Abbeville; Lacassine Branch; Mallard Junction to Hayes; Eunice to Mamon. In Texas, the Dallas Division of the Texas & New Orleans; Sour Lake Branch; Branch to Port Arthur; Gallatin to Rusk; Stockdale to Cuero; San Antonio & Gulf Railroad; Branch from Van Vleck southerly; Tres Palacios Extension; Wharton down Carney Creek; Lampasas Extension; Mexia to Nelleva; Lancaster Tap Railroad; Southern Pacific Terminal Co., elevators, buildings, etc., at Galveston. In California and Oregon: The Fair Oaks Extension; Branch Wyo to Hamilton; Tres Pinos to Lime Rock; Benedict to Smeltzer; Empire to Rossi; San Ramon Branch Extension; Fresno Branch; branch for the irrigation service, (4169) from Araz to Laguna Dam; Henderson to Springfield; Arizona & Colorado Railroad; Arizona Eastern Railroad; Butte County Railroad; California Northeastern Railway; Central California Railway; Coast Line Railway; Gila Valley, Globe & Northern Railway—reconstruction; Inter-California Railway; Lake Charles & Northern Railroad; Lincoln Northern Railway; Oregon Eastern Railway; Oregon Western Railway; Pacific Railway & Navigation Company; Peninsular Railroad; Sacramento Southern Railroad; San Francisco & Napa Bay Railway; Southern Pacific Railroad Company of Mexico; Beaverton & Willsburg Railroad; Oroville & Nelson Railroad; Sunset Western Railroad (½ interest); Fallon Railway in Nevada; Hazen to Churchville; Mojave, California, to Keeler, Nevada; extension of local tracks in Oakland, 14th street to 20th street; spur track via North Point to Beach street to Presidio, Government Reservation in San Francisco; Phoenix & Eastern Railroad; Maricopa & Phoenix Railroad; Corvallis & Eastern Railroad; Northwestern Pacific Railroad (½ interest); San Bernardino & Redlands Railroad; Coos Bay, Roseburg & Eastern Railroad & Navigation Company; Sunset Railroad (½ interest); Los Angeles Pacific Electric; Pacific Electric; Santa Clara Interurban; San Jose, Los Gatos Inter-

urban Railway Co.; Visalia Electric; Los Angeles Railway; Los Angeles Interurban Railway."

Mexican lines of S. P.

The line in Mexico is the Southern Pacific Railroad of Mexico. All of the Mexican lines, with the exception of the Sonora road, which is leased, are now under the corporate name of the S. P. of Mexico. Substantially all of the lines built in Mexico would cover a mileage of about 750 miles, but this mileage is not a part of the thousand miles I mentioned as having been constructed and shown in Exhibit 73 under the 114 million dollars. As to the $57,245,082.04 of construction and acquisition of new lines of the U. P., I read the list: (4170) "Union Pacific proper: From Grants Mine to La Salle, Colorado; from Greeley, Colorado, eastward; from Onaga to Marysville, Kansas; O'Fallons to Northport, Nebraska; Rock Springs to Coal Fields, Wyoming; Sand Creek to St. Vrains, Nebraska; Cedar Rapids to Spalding, Nebraska; Stromsburg to Central City, Nebraska; Thayer to Horse Thief Canyon, Wyoming; Topeka & Northwestern Railroad; South Omaha & Western Railroad; Pleasant Valley Branch; Salina & Northwestern. On the Oregon Short Line: Mendon to Wellsville; Logan to Wellsville; Malas Valley Railroad; Malheur Valley Railway; Minidoka & Southwestern; St. Anthony Railroad; Salmon River Railroad; Wyoming Western Railroad; Yellowstone Park Railroad; Northwestern Railroad. Oregon Railroad & Navigation Company: Elgin to Joseph, Oregon; St. John's to Troutdale, Oregon; Portland to St. John's, Oregon; Lewiston to Grande Ronde River, Idaho; Albina to St. John Extension; Dayton Extension; Sierra Nevada Mine Branch; Columbia River & Oregon Central Railroad; Snake River Valley Railroad; Gray's Harbor & Puget Sound Railway; Ilwaco Railroad; Lake Creek & Coeur d'Alene Railroad; Oregon & Washington Railroad; Oregon, Washington & Idaho Railroad; Umatilla Central Railroad; Clearwater Valley Railroad; Columbia Valley Railroad; Columbia Southern Railway." The U. P.'s interest in the San Pedro road is not in the 57 million dollars.

New U. P. lines constructed.

Increase in price of commodities.

Exhibit 64 shows the percentage of increase in the price of commodities which the U. P. purchased between 1897 and 1908. We purchased of course a great many commodities besides those specified, but we did not select the specified commodities with any reference to the rise in prices. We asked the purchasing agents to furnish a list of some of their principal purchases between those dates, showing prices paid in 1897 and 1908. Another statement shows the rise in prices of all commodities for all railroads of the United States. It was a matter of great labor to take everything. We took some. A few on this statement, for instance car wheels, show a very slight increase in price. (4171) The price of lubrication has increased during the last ten years, I know; because when we came to negotiate a new contract they wanted a good deal more money, and we paid them, as I recol-

lect, some more, but not as much as they wanted. Steel rails have been $28 a ton for a number of years. The lowest price we ever bought them for was in 1897; probably three or four years after that they were put up at $28. Most of the articles on this list increased materially between 1897 and 1908. My recollection is that there were very rapid and marked increases immediately prior to 1907.

Comparison of commodity and wage prices and freight rates.

(4172) I have a memorandum here to supplement Defendants' Exhibit 66. "I think it has not been introduced; I do not remember it, and I was careful to number all. It gives, for each year, the commodity and wages, prices, and freight rates, from 1890 to 1907. This list enables me to answer your question: that, taken from the Government reports, 258 commodities considered by them in making the computations, rose 44 per cent. between 1897 and 1907. I have not the figures for 1908; they do not seem to have been published. And, as confirming what you asked me, there was a rise, from 1897 to 1900, from an average price of commodities based on their basing price, which is the price of the preceding decade, from an index number of 90, to 110. That was to 1900. From 1900 to 1907 the average rose from 110 to 129½. In other words, from 1900 to 1907 the advance was a good deal more than half of the 44 per cent.; and a good deal less between 1897 and 1900. Even more striking was this: In 1905 the index number was, in round figures, 116; the next year, 122.5; the next year, 129.5; showing the rapid increase to which I referred in the two or three years preceding the panic of 1907." The increase from 1897 to 1900 was from index number 89.7 to index number 110.5; an increase of 21 points; and the other is 19. Exhibit 102 is made up on the basis of the actual speed of freight trains, exclusive of stops. During that time the diagram shows the number of stops or meeting points to have largely increased.

Increase in stops and meeting points.

(4173) Many of the meeting points did not involve stops. They involved delay, and if they are fortunately made they may not involve a stop. There was more time taken in stops. What interests the shipper is the actual time from one point to another. I have not an exhibit showing actual time of all freight trains during the two periods. I gave you the time in 1901 and to-day of the principal freight trains, carrying Pacific Coast traffic, and the reasons why it was longer. The time I gave for the 54 or 58 or 60 hour train, Council Bluffs to Ogden, was simply schedule time, but that train makes the schedule very regularly. In the Salt Lake investigation we had that looked up—a great complaint was made about Salt Lake time—and 88 or 89 per cent. of the time that freight was delivered in Salt Lake on time; and then the Salt Lake people said they were not complaining about the U. P., they were perfectly satisfied.

Shipper interested in actual time from point to point.

Freight delivered in Salt Lake on time 88 per cent of the time. Salt Lake people satisfied.

(4174) The 100-hour train runs a thousand miles, about 10 miles an hour. This train is included in the through time of 13 days from Atlantic to Pacific points, which is as good time as

made by our principal competitor, the Atchison, and, as we understand from conference with them, entirely satisfactory to the public. Of course there is a small percentage who are dissatisfied. It is our aim always to work on this small percentage and to try to please them because we would like to please the entire public. We do please, I can assure you, a very large per cent of them. In respect to inspection, the government regulations added six hours 6 minutes to the time it took us for inspection; since 1901. I gave 27 hours and 39 minutes as the estimate made to me of the total time and delays in inspection, of which about 6 hours had been added by government requirements. (4175) "The Government do not inspect whilst the railroad people are inspecting. What I mean is this: that the Government requirements as to the maintenance of safety appliances are so rigid, the fines are so harsh, so burdensome, that the railroads have been compelled to consume very much more time in insuring the condition of equipment to be such that they will not be fined."

Time of 100-hour train satisfactory to public.

Government regulations consume much time.

We arrange this inspection at points most convenient to us, and when the trains are naturally stopping. "But I think I also called attention to this fact, in my testimony: that trains moving between terminals will frequently develop some small defect that does not make a car or a locomotive at all unsafe, but it technically comes under the law; and the law has been enforced so rigidly that we cannot afford to take risks; therefore, the train has to be stopped and these cars switched out. We cannot exactly estimate that as coming within the 6 hours. The 6 hours is for inspection at terminals. The other delays would be added to that, whatever they may be." The enforcement of the law has been changed altogether since 1901. I believe a train may run now 28 hours without unloading, feeding and watering stock, with a proviso that you can take 36 hours, but they are so strict in construing the conditions on which you can make the difference, that it is rather dangerous to run it. I think it was 28; possibly the delay would be the difference between what we had voluntarily added and what the law had added.

Effects of law on defects occurring between stations.

Enforcement of law changed.

(4176) On the U. P. the average daily mileage for the year ending June 30, 1909, for freight cars, was 41. This depends in all these statistics on how much time the car is standing still at terminals and loading and unloading points—an average is made up. "Q. So that you take in the thickly settled portion of the country, like the Pennsylvania road, where there is enormous local traffic to coal mines, to industries, all along the line, to very large terminals in many places, the actual time made, of a freight car, is much less than on a line where the traffic is largely a through haul? A. Of course, if you concentrate your mind and your examination on that particular traffic, yes. But take again an example that you have taken yourself: the Pennsylvania line, for its entire mileage, is a double track line, and, for the larger part of its mileage a four track line, where they have absolutely no obstruction from meeting points, and where you see whole strings

Average daily mileage freight cars on U. P.

Pennsylvania has 2 and 4 tracks.

of freight trains, sometimes, one in seven or eight sections going along without any delay. That advantage is compensatory, and makes up for the handicap of delay of cars at coal mines. * * * That particular reason to which you called attention, unquestionably would tend to reduce the mileage per day. But there are other reasons that tend to increase it. The heavy-traffic eastern lines have so many tracks; take the New York Central; they not only have four tracks from Albany to Buffalo on their main line, but they have the West Shore road, with two tracks; they have six tracks, you may say, between the Atlantic and the Great Lakes. * * *

New York Central has practically 6 tracks.

(4177) "The Erie has a double track; the B. & O. has a double track a large part of the way; and so on. You can show that those roads, whilst in some directions there are influences tending to pull down the daily average mileage of freight cars, there are others contributing to a high daily average. Q. The principal delay in freight car movement is at terminals, and at loading and unloading points; isn't that true? A. That is quite true, yes, sir. I have said that. Q. The principal delay is not simply at meeting points of a through running train, is it? A. Yes, but a car, when you take the first case— Q. Can you answer that? Is that true? A. I am tying to answer it. No, I do not think it is true. The trains on the Union Pacific run up to 70 and 80 cars each, and every time you have a train delay it is imposed on 80 cars. Every time you speak of a delay in loading and unloading, the mind, naturally, from the line of your questions, concentrates on one car. The Union Pacific, with its 41 miles, has an excessively heavy coal tonnage, you know,—very heavy; and the same delays that the Pennsylvania experiences, the Union Pacific experiences at its mines."

Other lines double tracked.

Delays in car movements.

Heavy coal tonnage on U. P.

Not on the entire line, but "on that part of the Union Pacific where it has its coal mines, the density of traffic in 1907 was higher than on any railroad in the United States, as I remember it, with the exception of the Reading and the Pennsylvania. That was on a single track. The Pennsylvania had four, and the Reading had, as far as I know, double all the way, and perhaps in places four. Therefore, to answer your questions categorically, the Union Pacific, on those parts of its line where it had these coal mines, was operating against handicaps compared with which those of the Pennsylvania were almost negligible. * * * But the obstruction of traffic at one point would have struck traffic on the whole line."

Density of traffic on U. P. highest in U. S. exceeding two roads.

(4178) A large part of the U. P. and S. P. System mileage is in a country of small industries, no large terminals in that district, but the car mileage is affected by the single track, and the number of trains on a single track. I understand that our mail train took 6 hours more in 1909 than in 1905, and as I said the other day, the mails were delivered at an earlier period in San Francisco, the train starting at an earlier hour in Chicago and enabling us to get to San Francisco at an earlier hour in the day.

A country of small industries.

Mail train schedule.

I understand that the value of the U. P. Railroad property for taxation is fixed at so much per mile. The value had increased largely between 1901 and 1909, with all the money that we put in. (4179) "I have some information that I promised you I would work up for you. Adverting again to that rather disagreeable feature of percentages, the percentage increase—you will pardon me for referring to that, but really my mind is so constituted that it is about the only thing that pictures to me clearly just what does happen—on the Union Pacific there was an 80 per cent. increase in taxes. The periods are not exactly the same. That is 1901 to 1909. The figures I have before me, taken from the Statistics of Railways of the United States, which is an Interstate Commerce Commission publication, show between 1899—which was the date referred to by you last week—and 1908, not double the capitalization, as you thought, but 52 per cent. * * * I am speaking of the roads of the United States. You asked me, as I understood your question, whether I did not know that there had been a large increase of money put in all railroads. * * * Now, that is an increase of 52 per cent.; but only 20 per cent. of that is due to the additional money put in the railroads. Now, the taxes have increased 89 per cent."

89 per cent increase in taxes on U. P.

Tax increase disproportionate.

I cannot say offhand what the value of the U. P. property was in 1901 and today—it is much larger to-day; and the same with the S. P. I cannot say offhand whether the values have actually increased in this same percentage of increase as the taxes.

(4180) "With regard to the 168 cars, I made my previous answer on the language of a memorandum here, which is a little ambiguous. The 168 cars were not all the cars that moved from Omaha to San Francisco; but this memorandum was made up for me when I was in San Francisco some months ago, and I asked to have the time that was being made by manifest freights between those points checked up. They took a number of these manifests, spread over the months of (May), June and July, and they happened to total 168 cars, with the result that I have testified. * * * Q. Some reference was made to the reports of the Interstate Commerce Commission in 1904, and the years previous thereto. Was the tonnage of company freight included with the tonnage of revenue freight in the total tonnage reported in the ton mileage and also in the earnings for those reports; that is, for 1904 and previously thereto? A. The Interstate Commerce Commission, at a certain time, some years ago, did change the basis on which they computed the statistics. I don't know just what year it was. Perhaps I have some note on it that would show. Q. I think this is the memorandum that you gave me. (Handing paper to witness.) A. Yes; I was misled in your question. This related to a question of average rates, and when you asked the question I thought at once of ton mileage. Of course one has a great deal to do with the other. The reason I did not understand your question was that the

Time of manifest freight.

memorandum I made related to rates. (Mr. Reporter, will you read the question, and my answer, please.)

"The question and answer were read.

Method of computing ton-mile rate changed.

(4181) "WITNESS. As to the ton mileage, I think our reports still show that, but when it comes to a computation of the average rate, which is based on ton mileage, I do know that the Interstate Commerce Commission changed the basis for that; that, prior to a certain date, they computed the average rate on all of the tonnage carried, and subsequent to that date they confined the average rate to the commercial tonnage carried, cutting out the freight carried for the company itself. Q. The dividing year was, I think, 1904? A. I don't remember the year, but that seems to me about right. I should say, offhand, three or four or five years ago. Q. This company freight at that time took the half percent. per ton per mile rate, did it not? A. As I remember it, the Union Pacific carried freight for the Short Line and the Navigation Company, which they owned outright (every share of the stock they owned), and I think the company rate was 5 mills up to the point where the freight reached the rails of the road on which it was used, and then no freight was charged. The Interstate Commerce Commission changed that, and I am quite certain that at the present time the Union Pacific must charge the other lines tariff rates."

Must now charge tariff rates on freight of controlled lines.

Ratio of operating expenses to earnings.

I have compiled a statement of the percentage of operating expenses to earnings for the U. P. and the S. P., from 1899 to 1909. "I was scolded so much about this operating ratio, which is really a tender point with me, because it is a question of checking up the efficiency of these gentlemen sitting around here, who are operating these properties, and I did not want them to get the idea that a low operating ratio was illegal; so I had the comptroller make this up himself. From 1899 to 1909 the ratio of operating expenses to earnings of the Union Pacific was as follows: *** 1899, 52.16; 1900, 51.59; 1901, 53.60; 1902, 50.92; 1903, 53.53; 1904, 52.51; 1905, 51.19; 1906, 52.41; 1907, 53.36; 1908, 54.83; 1909, 48.18. Southern Pacific: 1899, 64.22; 1900, 64.78; 1901, 63.56; 1902, 65.71; 1903, 68.27; 1904, 67.98; 1905, 66.65; 1906, 64.49; 1907, 64.21; 1908, 68.68; 1909, 62.89. I stated the other day, I think, that the maximum operating ratio was reached in 1908, after the full effect of the 1907 panic had been felt—on both systems it was the highest—and on both systems in 1909, in face of the rigid economy practiced and deferring repairs that were deferrable, the operating ratio was at the low-water mark. It was the lowest on both systems for the entire period of eleven years."

Rate of dividend on U. P. stock.

I have prepared a statement of the dividend rates on U. P. stock, both preferred and common, about which the Complainant's counsel asked me. (4182) "I stated in my testimony that it seemed to me the fair way to measure these dividend rates was from some previous period. I think Mr. Kellogg asked me what dividends had been paid from 1898, the time of the reorganization; so, I got the dividends from that date—from 1898 to 1909 inclusive. The preferred stock

paid an average dividend of 3.67 per cent.; the common stock an average dividend of 5 per cent., but in that average is taken 4 per cent. paid annually from 1907 to date on investments, and not from transportation operations. * * * In 1898 the preferred paid nothing, and from 1899 to 1909 it paid 4 per cent. annually. In 1898 and 1899 the common paid nothing; in 1900, 3½ per cent.; 1901, 4 per cent.; 1902, 4 per cent.; 1903, 4 per cent.; 1904, 4 per cent.; 1905, 4½ per cent.; 1906, 6 per cent.; 1907, 6 per cent. on transportation operations, 4 per cent. on investments; 1908 and 1909, the same as 1907. The average for both preferred and common was: for 1898, nothing; 1899, 2.31 per cent; 1900, 3.75 per cent.; 1901, 3.96 per cent.; 1902, 4.02 per cent.; 1903, 4 per cent.; 1904, 4 per cent.; 1905, 4.19 per cent.; 1906, 5.30 per cent.; 1907, 7.98 per cent.; 1908, 7.98 per cent.; 1909, 7.92 per cent.—average for the period, 4.62 per cent."

Average dividend on U. P. for 12 years 4.62 per cent.

I have also made a statement of the S. P. dividends. "In the years 1898 to 1904 there was no preferred, as I remember it, and it paid nothing; from 1905 to 1909, inclusive, it paid 7 per cent. The common from 1898 to 1905, inclusive, paid nothing. In 1906, 2½ per cent.; 1907, 5¼ per cent.; 1908, 6 per cent.; 1909, 6 per cent.—an average for the period of 1.64 per cent." For the years 1898 to 1904 the average for both preferred and common was nothing. "In 1905 the average was 1.2 per cent.; 1906, 3.2 per cent.; 1907, 5.6 per cent.; 1908, 6.3 per cent.; 1909, 6.4 per cent.—an average for the period of 1.9 per cent." The average rate of dividend paid on stocks by all railroads in the United States, in 1909, on the authority of Poor's Manual was as follows: "In 1898, 1.71 per cent.; 1899, 1.92 per cent.; 1900, 2.44 per cent.; 1901, 2.65 per cent.; 1902, 2.97 per cent.; 1903, 3.03 per cent.; 1904, 3.31 per cent.; 1905, 3.27 per cent.; 1906, 3.63 per cent.; 1907, 3.73 per cent.; 1908, 3.50 per cent.—or an average for the period of 2.92 per cent. In its 23rd annual report the Interstate Commerce Commis- (4183) sion, on page 62, says, as to all railroads in the United States for 1908, 'The amount of dividends declared during the year was $386,879,000, being equivalent to 7.99 per cent. on dividend-paying stocks.' * * * For the same year, 1908, the U. P. averaged on its preferred and common stock 7.89 per cent., and the S. P. Company 6.30 per cent."

Dividends on S. P.

Average dividend all roads for 11 years 2.92 per cent.

I do not say whether or not these stocks represent actual cash put in the road, but I suppose those matters have been carefully looked into by the Commission and others who have made up these figures. I don't really know what the Commission has looked into; I rather assume that they have looked into everything that they thought of interest to the public. (4184) I suppose they have satisfied themselves as to the fairness of these valuations. I do not think the dividend rate has anything to do with the fairness of valuation, or with the fairness of rates. The mere fact of a reduction of the dividend of the U. P. would not make a rate that was reasonable, unreasonable; or vice versa. U. P. preferred stock, limited, I think by charter to 4 per cent., was paid every year except

Dividend rate has nothing to do with fairness of rates.

1898. In 1907 U. P. paid 6 per cent. on its common stock from operation, and 4 per cent. from investments.

Rate otherwise reasonable could not be influenced by dividend changes.

(4185) In speaking of these 10 per cent. dividends, I stated that the public had got a very handsome return in our failure to raise rates to keep pace with increasing expenses. In thinking over the matter, I couldn't see what possible effect a reduction of dividends would have on a rate that was otherwise reasonable, or how the road could reduce its rates between certain points, which I understand are now made uniform by law, without attracting all the freight to it, and then the earnings would have been bigger still. The other roads would have been bankrupted apparently. No preferred stock of the S. P. was issued, as I think, until the year of the commencement of paying dividends. We paid dividends on the preferred stock from that date, 1905, to 1909. In the past we charged a good many improvements to operating expenses, but not now, as I understand it. The Commission has (4186) prescribed very rigid rules as to what must be charged to expenses, and what to capital. Up to the time when the Commission issued its regulations, which have the force of law, we charged certain improvements to operating expenses—all roads were doing that; so that of course operating expenses during some of these years between 1899 and 1907 or 1908 would be affected by the amount charged for improvements to operating expenses.

Methods of accounting changed.

Mohler.

(4186) A. L. MOHLER.

Omaha. Vice Pres't and Gen. Manager U. P.

Resides in Omaha; Vice-President and General Manager of U. P. Witness gives statement of his railroad experience, beginning with the Chicago and Northwestern at Galt, Illinois, as warehouse and office clerk; transferred to the Rockford, Rock Island and St. Louis as station agent; then to the auditor's office of the same road at Rockland, Ill.; then to the Burlington, Cedar Rapids and Northern as pioneer agent, chief clerk of the freight department, assistant general freight agent, and general freight agent; then to the Great Northern Railway as general freight agent, land commissioner, general superintendent, assistant general manager and general manager; then to the O. R. & N., as president; since April 1, 1904, in his present position. Witness has become acquainted with the changes which have been made in the physical characteristics of the road since its reorganization in 1898.

His railroad experience.

Changes in physical characteristics of U. P. since 1898.

The principal changes in the physical characteristics of the road which have been made since the reorganization in 1898, are as follows: "As compiled from the chief engineer's records, from Council Bluffs to Ogden, the Omaha-Lane cut-off was constructed, a distance of 15 miles, with a saving of 8.9 mileage over the previous old line located farther south. The eastbound grade of the old line was 42.2 feet to the mile; the westbound line was 41.7 to 66 feet per mile. The new line as constructed made the grade 26.4 eastbound, and from (4187) 31.7 to 66 feet westbound. From Lane to Grand Island, a distance of 129.7 miles,

Reduction of grades.

the eastbound grade of the old line was 39.4, of the new line 26.4; the westbound grade was 42.2, and of the new line 31.7. From Grand Island to North Platte, a distance of 137.3 miles the eastbound grade and the westbound grade remained unchanged on both the new line and the old. From Sidney to Cheyenne, a distance of 102.1 miles, the eastbound grade on the old line was 45 feet to the mile, on the reconstructed line 37 feet; the westbound grade on the old line was 39 feet per mile, and the reconstructed line 37 feet. From Cheyenne to Laramie, which carries the line over the summit of the Rocky Mountains, a distance of 56.5 miles, the old grade was 98 feet eastbound, and on the new line 43 feet; on the westbound, the grade was 87 feet, which was changed to 43 for some distance, and 82 maximum.

Distance and grades reduced.

"From Laramie to Medicine Bow, a distance of 72.4 miles, this line by a change of line was reduced to 56.6 miles, a saving of 15.8 miles. The grade on the old line was 53 feet to the mile eastbound, 43 feet on the new; westbound on the old line 83 feet, 43 feet on the new. From Medicine Bow to Rawlins, the distance on the old line was 64.1 miles, which was reduced to 60.2 miles by reconstruction; the grade on the old line eastbound was 76 feet to the mile, on the reconstructed line in the same direction 43 feet. On the old line westbound 66 feet, on the reconstructed 43 feet. From Rawlins to Wamsutter, a distance of 42.5 miles of old line, reconstructed to 41.3 miles new line. The grade of both the east and westbound old line was 67 feet, while the grade was reduced to 43 feet in both directions on the new line. From Wamsutter to Green River, a distance of 93.1 miles, the reconstructed line is 92.9 miles; the grade eastbound on the old line was 70 feet, on the west line 67 feet; the grade on both east and west lines of the new constructed line was 43 feet. From Green River to Granger, a distance of 30.6 miles, reduced to 30.1; the grade in both directions on the old line was 67 feet; reduced to 43 feet on the newly constructed line in both directions. From Granger to Evanston, distance 79.7 miles, reduced to 70.1 miles, by the construction of a tunnel of 6,100 feet; the grade in the eastbound direction was 68 feet, on westbound 69. These grades were reduced to 43 feet in both directions."

Reconstruction reduced distance between Omaha and Ogden 40 miles.

The saving in the reconstructed distance from Omaha to Ogden is 40 miles. Considerably over 150 miles of the old line was abandoned. There were 188 miles of the reconstructed railroad. (4188) The reconstructed mileage was principally in Wyoming through the mountainous territory. Another tunnel, 1,800 feet long was constructed at Sherman on the top of the Rocky Mountains. The highest point on the new line of the U. P. is 8,011 feet, located at Sherman. The old line was 247 feet higher. Extensive track changes were made between Kansas City and Topeka. The single track between those points has been replaced by a double track, with considerable change in alignment and grade. By building 17½ miles of new line on the road between Denver and Cheyenne,

Reduction of grades between Denver and Cheyenne.

the grade was reduced from 95 feet to the mile westbound to 63 feet to the mile westbound, shortening the distance from Denver to Ogden 13½ miles. (4189) Since the reorganization, Union Pacific has built the following new lines: From O'Fallons to Northport, Nebraska, along the North Platte River, 114.88 miles. From Stromsburg to Central City Junction, Nebraska, 21.98 miles. From Menoken to Carden, near Marysville, Kan., 69.71 miles.

New lines constructed on U. P.

New mileage in Nebraska and Colorado.

"We constructed in Nebraska what is known as the Lane cut-off, 11.61 miles. We have constructed in the coal territory, in the vicinity of Rock Springs, Wyoming, 9.05 miles. We have about completed construction, in the vicinity of Greeley, Colorado, what is known as the Pleasant Valley branch, 13.16 miles. We have about completed in the same vicinity what is known as the Greeley branch, a distance of 26.16 miles. We have also under construction and nearly completed from Sand Creek, a station immediately outside of Denver, to La Salle, a distance of 40.47 miles. The purpose, primarily, of this construction is to put in between La Salle and Denver a double-track service. We are authorized, contract has been let, and work is under construction, to build a line in Colorado from Dent to Fort Collins, a distance of 24.75 miles. We have recently contracted for, and the contractors are on the ground, a line to what is known as Kilpacker Creek, a distance of 21.73 miles." This is in Wyoming.

Additional double track.

In 1900 there were 11.33 miles of double track on the main line of the U. P. between Council Bluffs and Ogden. It extended from Council Bluffs to Gilmore. In 1901, 1902, and 1903, there were 69.12 miles of double track; in 1904, 1905, and 1906, there were 94.65 miles; and in 1907, 214.52. (4190) In 1908 the total mileage of double track was 297.12 miles, and in 1909, 390.25 miles. This double track is located between Council Bluffs and Watson's Ranch, in Nebraska, Archer and Buford, in Wyoming, and Lookout and Hanna, in Wyoming; between Hermosa and Laramie, Rawlins and Wamsutter, Point of Rocks and Rock Spings, Green River and Granger, and two miles from Ogden station immediately east. There were 69 miles in Kansas—2 miles from Denver east. At the present time the total mileage of U. P. double track is 459 miles. All of it is under actual operation. 70 miles were put in commission during various parts of the summer of 1909. There are now under active construction 226 miles of double track, running from Watson's Ranch to Julesburg; Rock Springs to Green River, in Wyoming; Hanna to Rawlins, in Wyoming, and 2 miles in the vicinity of Denver, from Sand Creek to Pullman. Every effort is being made to complete all this double track now under construction during the year 1910.

Mileage covered by block signals increased from 10 to 1,529.

(4191) "There were about 10 miles of block system on the Union Pacific Railroad about the time of the receivership, between Council Bluffs and Gilmore. This has now been extended so that we have

at the present time 1,529 miles, covering our main line from Council Bluffs to Ogden, our Denver line from Julesburg to Denver, our Kansas line from Kansas City to Topeka, and now under construction and coming in service daily (small portions of it) from Topeka to Salina, in Kansas; from La Salle to Cheyenne in Colorado and Wyoming." The Denver line leaves the main line at Julesburg, from the east; so that makes a continuous system of automatic block signals on your Denver line from Council Bluffs to Denver via Julesburg. In addition to the block signals, the rear of trains are still protected with flagmen. In addition to warning engineers of the approach of trains, the block signal is a remarkable discoverer of broken rails. Whenever the rail breaks, as a rule it breaks the circuit and it throws the signal to danger as a consequence. The company has escaped, witness believes, some very serious accidents, through that medium. Attention has frequently been called to broken rails by the action of the automatic block signal system.

Block signals discover broken rails, etc.

Since April 1, 1904, the U. P. has installed 89 passing tracks, 68 terminal tracks (terminal developments), and 259 industrial tracks, representing a total of 946,198 lineal feet, at a cost of $1,265,224.00 (4192) It has constructed during the same period 58 stockyards at an expense of $72,853.00. It has constructed during the same period 45 section houses. "The more extensive stockyards were constructed for feeding purposes at Green River, Rawlins, Laramie, North Platte, and Grand Island. These yards were used for the purpose of taking care of stock under the 28-hour and 36-hour requirements, and were located and designed after conference with the Stock Growers' Committee of the State of Wyoming, as to the manner in which they should be constructed and where they should be located, and had their entire and full approval; and we consider they are more extensive and more modern in their character than the yards of any similar roads west of Chicago." They are fitted up with different apartments, with electric lights in many instances, with water facilities, and also with hotel accommodations. These electric lights are are lights for the purpose of lighting up the yards.

New passing and terminal tracks.

Stock yards.

Stock growers consulted.

Stock yards highly modernized.

Witness produces photographs of the following new stockyards: Green River, constructed at a cost of $28,848.00; Laramie, at a cost of $15,836.00; Rawlins, at a cost of $14,866.00; Grand Island, at a cost of $17,129.00; North Platte, at a cost of $29,761.00. These photographs were introduced in evidence and marked Defendants' Exhibits 112 to 120, inclusive. 45 section houses were constructed at a cost of $59,740.00, and 274 miscellaneous buildings at a cost of $101,713.00. 36 new depots have been built since April 1st, 1904, at an expense of $113,057.00. (4193) The Omaha depot was constructed since the receivership at a cost of $406,178.00. The title of that building is in the U. P. R. R. Co. Photographs of Omaha depot are identified and introduced in evidence. They are marked Defendants' Exhibits 121 and 122. A depot at Columbus, Nebraska, was constructed at an expense of $28,036.00. A photo-

Location and cost of some new stock yards.

Photographs of new depots, etc.

graph of it is marked Defendants' Exhibit 123. A depot was constructed at Rock Springs, Wyoming, at a cost of $12,534.00. A photograph of it is marked Defendants' Exhibit 124. A depot was constructed at Sterling, Colorado, at a cost of $6,618.00. Photographs of it are marked Defendants' Exhibits 125 and 126.

New depots at various points.

Witness calls attention to a sample of U. P. suburban depot on Lane Cut-off, with park surroundings, constructed at a cost of $5,292.00. It is located on the outskirts of Omaha. A photograph of that depot is marked Defendant's Exhibit 127. There is a new depot under construction at Central City, Nebraska, which will cost $20,000.00; also one at Green River, Wyoming, which will cost $50,000.00. During the same period there was completed at Manhattan, Kansas, a new depot costing $9,695.00. (4194) Photograph of Manhattan depot is marked Defendants' Exhibit 128. The company is a believer in ornamentation and is developing quite an extensive park system in connection with its various depots. It has 33 parks of considerable importance now installed, and quite a large number of minor ones. As a sample of some of its best parks, witness produces a photograph of the park connected with the Cheyenne depot. It is marked Defendants' Exhibit 129.

New union depot for Kansas City.

The company has entered into obligations in connection with other roads at Kansas City, to construct a new passenger depot there. The U. P. will probably have to pay not less than $2,000,000.00 as its share, in order to improve its facilities at Kansas City.

New terminals at Sharon Springs and Hugo.

The company has constructed at Sharon Springs, Kansas, and Hugo, Colorado, new terminals, at an expense of from $120,000.00 to $140,000.00 each. Photographs of the Sharon Springs roundhouse and depot and water station, which are duplicates of those at Hugo, are marked Defendants' Exhibits 130 and 131. These terminals were constructed because the Federal 16-hour Labor Law made it necessary to re-arrange the terminals.

(4195) They had been something like 160 or 170 or 180 miles apart. The construction of these new terminals at Sharon Springs and Hugo makes them from 105 to 110 miles apart. Coaling stations now being installed are of the conveyor type, and are so arranged as to feed two or three tracks. They are of expensive construction, but facilitate the movement of trains by handling the coal by gravitation. During the receivership the coal was handled by buckets and cranes and other ancient methods. Under the present system the coal is dumped into a pit about as grain is dumped into an elevator pit. It is carried from the pit up into the coaling station with link belts holding buckets, and the coal is thereafter permitted to run into the locomotive by gravity. All new coaling stations are now being built upon that plan. The cost of these modern coaling stations runs from $10,000.00 to $30,000.00. A photograph of the coaling station at Hanna, Wyoming, is marked Defendants' Exhibit 132.

Modern coaling stations.

Recreation buildings at Green River and Evanston.

(4196) The Company has constructed at Green River what is known as a recreation building. It provides accommodations for

the employees in the way of bath conveniences, sleeping apartments, etc. Cost of the building was $28,848. A building of similar design is under construction at Evanston, Wyoming. The building at Green River was completed last Fall. "It meets with the general approval of the employees and is believed to be a wise and humane and Christian proposition." Photograph of the building referred to is marked Exhibit 133. During the same period 7 round-houses have been constructed at a cost of $104,588. There is now in for approval and construction this year enlargement of terminal facilities at Green River, Evanston, Laramie, Cheyenne, North Platte and Grand Island, aggregating a little over $2,000,000.00. Numerous track scales have been constructed along the line. $188,000.00 have been expended for new icing houses to take care of the enormous quantity of refrigerator freight passing over the U. P. "I believe it is generally conceded that the Union Pacific has one of the largest icing propositions in the United States located at North Platte, where 20 or 30 cars can be simultaneously iced with very little delay."

Provision for enlargement of terminal facilities.

Icing houses are located at Ogden, Evanston, Green River, Rawlins, Laramie, Cheyenne, Sidney, North Platte, Grand Island, Council Bluffs, Omaha, Columbus and also some stations on the other divisions. (4197) Quite a number of crossing bells have been installed at grade crossings or public highways at a cost of $25,454. On the new Lane cut-off, which is substantially 11 miles long, there are 3 overhead railroad crossings, 3 underground railroad crossings and 3 over-head high-way crossings. There is only one crossing at grade. It is the policy of the Company to eliminate crossings at grade wherever possible. The Company has constructed in the vicinity of Elkhorn a new double track modern bridge at a cost of $94,116. A photograph of it is marked Exhibit 134. Over the stream at North Platte a new steel bridge has been constructed at a cost of $91,939. It replaces a wooden structure. Photographs of the old and new bridge are marked Exhibits 135 and 136. A new steel bridge has been constructed at Fort Steele, Wyoming, at a cost of $40,524. Two photographs of it are marked Exhibits 137 and 138. There is a double track bridge just completed over the Loup River near Columbus, Nebraska. (4198) Photographs of the old and new construction are marked Exhibits 139 and 140. The cost of the new bridge was $215,140.00.

Icing houses and crossing bells.

Trying to avoid grade crossings.

New bridges.

At Kansas City arrangements have been made for the construction of a new bridge over the Kaw River at a cost of $415,000. A commissary building has been constructed at Omaha at a cost of $127,465.00. A photograph of it is marked Exhibit 141. New shops at Omaha have been constructed at a cost of $2,028,296. It is one of the most complete shops of its kind in the country for its size. Photograph of it is marked Exhibit 142. Witness also produces photographs showing sample of U. P. Standard Track Maintenance at Granite Canyon, Wyoming, Exhibit 143; St. Marys, Kansas, Exhibit 144; Peterson, Utah, Exhibit 145;

Commissary building.

New Omaha shops.

Photographs showing tracks.

Watson's Ranch, Nebraska, Exhibit 146; Otto, Wyoming, (4199) Exhibit 147; Echo, Utah, Exhibit 148. Photograph of the Lane cut-off showing overhead high-way crossings, Exhibit 149. U. P. overhead bridge on the Lane cut-off, Chicago & Northwestern crossing, (the Chicago & Northwestern Railroad is 90 feet below). The photograph is marked Exhibit 150. A photograph representing the progress of construction of the Lane cut-off in filling embankments is marked Exhibit 151. Another photograph showing the construction of the Lane cut-off is marked Exhibit 152.

Location and cost of interlocking plants.

Many interlocking plants have been built at various points in Nebraska and Colorado for the purpose of protecting the railroad crossings at grade. They have been constructed at Council Bluffs, Omaha, Fremont, Central City, Columbus, Borie and others on the Kansas Division. The cost of these interlocking plants averages from $10,000 to $20,000 a plant—original cost of construction. The cost of maintaining U. P. block signals is about $80 per signal per annum. (4200) That means a cost of not less than $225,000.00 per annum for merely operating and maintaining the 1,529 miles of electrical installation on the U. P. proper, of which witness is the General Manager. About 175 men are employed on the U. P. proper in the maintenance and operation of its automatic block signal system.

New steel car freight equipment.

"Prior to the receivership the freight car equipment was largely of wooden construction. In 1899 the Union Pacific purchased its first thousand cars of steel construction for freight equipment. It purchased in 1901, 335 additional cars, 500 additional cars in 1903, 1 in 1905, which was an experiment of new design and construction; 104 in 1907, 40 in 1908, 120 in 1909, and 42 under contract since June 1, 1909. During this same period there were purchased what is called steel underframes for all kinds of freight car equipment including steel cars, to-day 46.35 per cent. of the total car equipment being steel construction or steel underframe construction. During this same period, commencing with 1906, the company commenced experimenting with steel passenger equipment. During that year it purchased 7, and additional ones since that date and under contract, having in service to-day about 80 cars, and has discontinued entirely the purchase of wooden equipment for passenger-car purposes." The cost of steel equipment is much greater than the cost of frame equipment. Freight car equipment is now largely purchased with a capacity of 100,000 lbs. or 50 tons. In 1901 the ruling capacity was about 30 tons.

Steel passenger cars now the standard.

Increase in number and capacity of locomotives.

There has been considerable increase in the number and capacity of locomotives since 1901. "In 1901 we had 551. In 1909 we had 517 with tractive power of 23,880 lbs; in 1909 we had 660 with tractive power of 29,936, or an increase in tractive power of 38 per cent." (4201) There are now many more dining cars in service than in 1901; observation cars have been attached to many of the trains, and other observation cars with sleeping facilities—

many others. Witness thinks the number of observation cars is twelve times as great as in 1901, and in the matter of dining cars we operated about 10 in 1900 and now have 39.

Number and character of through limited trains.

"We had no electric lighted trains in 1900 or during the receivership. There has since been installed an electric lighted train operating from Chicago to Portland without change of cars; another one installed from Chicago to San Francisco without change of cars; another one installed from Chicago to Los Angeles, up to the period of the recent flood, without change of cars; another one installed from St. Louis to Cheyenne, without change of cars; 2 each way installed between Chicago and Denver without change of equipment." Between Chicago and Council Bluffs these trains run over the C., M. & St. P. and the C. & N. W. The character of equipment carried in these trains is the equal of any equipment carried in any other train in the country. It is the best of modern construction. These trains are carrying sleeping cars, observation cars, dining cars, and steel chair-cars in some of the trains, as well as steel baggage cars. The Denver trains, and the Los Angeles trains and the Portland trains carry steel day-coaches. The Overland Limited carries no coaches. The betterments just described have resulted in a material improvement to the service. Without them it would have been impossible to handle the present traffic satisfactorily. Traffic in general volume is handled very expeditiously, with more satisfactory and better service in both freight and passenger than was provided for in 1900.

Increase in freight traffic between Council Bluffs and Ogden.

The traffic between Council Bluffs and Ogden increased from the year 1901 to the year 1909 about 113 per cent. (4202) In 1900 the ton miles from Council Bluffs to Ogden were 3,775,980,210; 1901, 3,855,436,652; 1902, 4,110,833,810; 1903, 4,324,881,370; 1904, 5,484,663,397; 1905, 6,539,550,092; 1906, 7,371,347,196; 1907, 8,111,666,457; 1908, 7,718,508,000; 1909, 8,064,882,000.

Increase in passenger traffic.

Between Council Bluffs and Ogden, the passenger train mileage in 1900 was 2,597,450; 1901, 3,050,152; 1902, 3,047,073; 1903, 3,787,193; 1904, 3,620,976; 1905, 3,369,509; 1906, 3,963,243; 1907, 4,297,398; 1908, 4,484,687; 1909, 4,400,949. That is an increase, from 1900 to 1909, of about 69½ per cent.

Increase in passenger trains per mile one day.

The average number of passenger trains per mile one day, over the main line between Council Bluffs and Ogden, was as follows:

1900	7.31	1905	9.18
1901	8.22	1906	10.80
1902	8.27	1907	11.70
1903	10.36	1908	15.37
1904	9.83	1909	12.28

Train increase necessitated slower time.

Those figures represent an increase of about 68 per cent. The frequency of the service, the frequent meeting of the trains, and its volume, in connection with safety and operation, made (4203) it necessary to slow up the trains as compared with the earlier history of the traffic, and made it more difficult to operate trains on schedules.

No. 19—54-hour train.

In 1900 there was a fast freight train carrying California freight between Council Bluffs and Ogden, Number 19. It handled also Utah and Oregon freight. In 1900 the schedule of that train was 54 hours and 30 minutes. In 1901 it was 58 hours and 25 minutes. In 1902, 64 hours. That train carried manifest or preferable commodities.

Manifest freight

"Manifest or preferable commodities" are "articles that, for traffic reasons, were specially selected to have preferable service, to avoid delays in transit; and represented, at that time, in total number, 34; which included beer, canned goods, cheese, condensed milk, chocolate, crackers, cranberries, crockery, earthenware, eggs, fish, fruit, furniture, go-carts, molasses, nursery stock, organs, oysters, paints, packing-house products, pianos, perishable freight, poultry, sewing machines, spirits, stoves, syrup, sugar, varnish, vegetables, whiskey and wines, woodenware, bicycles, and mixed carloads of merchandise."

Preferential attention.

This particular class of freight was given preferential attention "by what we call the manifest way bill, which is inaugurated when the shipment starts at the terminal, and carries with it a photograph record through to the other terminal or its final destination. The shipment is watched continuously from one terminal to another, and any delay reported to that shipment is at once wired to the division officer as to the cause and reason of the delay, so it can be early reinstated in resumption of service." In 1901 the preferential service was given only to the class of articles just enumerated. "Any article not embraced in this list, if this list was sufficient in volume to fill up the train, would take a very much slower schedule; would move from one division terminal to another more or less at the convenience of traffic and the disposition of the division officer. It was not an expedited service, and it was not so intended to be." The expedited service at that time was entirely confined to the 34 articles just read. (4204) "In 1904 there was a very material increase in these manifest articles, so as to give more general expedited service on all traffic handled, rather than to confine it to a few articles—as was the case in 1900."

Number of manifest articles increased.

In referring to all other traffic handled, witness meant to include freight other than general merchandise. The following is a list of all the articles which came under manifest ruling in 1904 and embraces all of the articles now included as manifest articles:

"Benzine, boards, straw and wood pulp, boats, bottles, box material, building material, bridge material not railroad, broom corn, butter, cable wire, carriages, canned goods, cans, cartridges, cement, condensed milk, cereals, cheese, chocolate, cocoa, coffee, cooperage, crackers, cranberries, crockery, demijohns, doors, windows, etc.; earthenware, eggs, enameled ware; fish frozen, pickled and salted; fixtures, bank, bar and store; flour for export; fruits, fresh and dried; furniture, gasoline, glass, glucose, glycerine, go-carts, granite, graniteware, ice-cream freezers; iron, sheet and tin; laths; lumber, finished hard-wood; machinery, malt, mantels, marbles, matches, meters, mineral water, molasses; nails for export, naphtha; nursery stock; oils of all kinds; ore, organs, oysters, packing house prod-

uets, paper bags and boxes, paper, paints, pianos, piano and organ stools, pipe, pottery, poultry, plaster, powder, pumps, plumbers' supplies, crockery, ranges, refrigerators, safes, sewing machines, sheep dip, sheet steel, soap, spirits, stamped ware, staves and heading, stoves, store furniture, stoneware, structural iron, structural steel, syrup, terra cotta, theatrical scenery, tin plates, tinware, trunks, turpentine, varnish, vegetables, vehicles in parts, wagons in parts, wagon wood, whiskey and wines, windmills in parts, wire fencing, wire and woodenware: representing 113 articles as against 34 articles covered by similar service in 1900." Those are articles which are generally carried in carload lots. (4205) Prior to 1904 the average time actually consumed in carrying the commodities other than the 34 included in the original list, between Council Bluffs and Ogden was about 125 hours. All of these articles now receive the same sort of service and attention—the same general treatment.

Time made by non-manifest freight.

"Q. Have you made an investigation to determine whether or not this train did actually make the schedule time between Council Bluffs and Ogden during the period I have inquired about, to wit, the years 1901 and 1902, and thereabouts? A. I have. Q. Please state the results of your investigation—what the facts are. MR. SEVERANCE. I reserve the same objection to that. A. As taken from the train dispatchers' sheets in effect at that time, and as compiled under my instructions by the parties who had charge of this class of work, we find—— Q. Please state, first, how the investigation was made. A. The investigation was made in this manner; we selected three days in the month of June and three days in the month of October, without reference to what they would produce, so as to take a general average of the performance. We selected June for the reason that it represented the lightest month in the fiscal year's service, where the operations were the easiest and least difficult and not affected by weather conditions. We selected October because it represented the heaviest month in the fiscal year, but entirely free, still, from what is known as weather conditions, which occur later in the winter season and are one of the serious difficulties under which we operate over the backbone of the continent. With reference to that information, we have here on June 3, 1900, this train scheduled at 54 hours and 30 minutes. The dispatchers' sheets were not obtainable from Green River to Ogden."

Actual time made by 54-hour train.

The track between Green River and Ogden was under the jurisdiction of the operating officials of the U. P. at that time. "The schedule time of this train from Green River to Ogden was 15 hours. The time actually consumed in running from (4206) Council Bluffs to Green River was 65 hours. Assuming that this train would lose no additional time and would make its schedule of 15 hours, that would represent an actual service of 80 hours as against the published schedule of 54 hours and 30 minutes. On June 11, 1900, this same train operated from Council Bluffs to Green River in 43 hours and 10 minutes. Assuming that it would not lose any additional time, its delivery at Ogden would be 58 hours and 10 minutes. On

Could not make its schedule time.

June 19, 1900, the time consumed on this train, from Council Bluffs to Green River, was 93 hours and 18 minutes. Had it lost no additional time, it would have reached Ogden in 108 hours and 18 minutes instead of 54 hours and 30 minutes. On October 1, 1900, this same train consumed, in the territory named before, to Green River, 52 hours and 19 minutes. Its time at Ogden, if it lost nothing more on its schedule, would be 67 hours and 19 minutes. On October 9, 1900, the time consumed to Green River was 71 hours and 59 minutes. If no more time was lost, Ogden would be made in 86 hours and 59 minutes from Council Bluffs. On October 17, the time consumed to Green River was 66 hours and 5 minutes. If no additional time was lost, the train would have reached Ogden in 81 hours and 5 minutes. June 2nd, 1901, at which time the train dispatchers' sheets were available for the entire district—— * * *

Schedule time and actual time.

"The schedule was 58 hours 25 minutes, June 2, 1901. The train actually consumed 82 hours and 5 minutes. June 10, 1901, the train actually consumed 84 hours and 30 minutes. June 18, 1901, the train actually consumed 85 hours and 20 minutes. October 2, 1901, the train actually consumed 84 hours and 5 minutes. October 10, 1901, the train actually consumed 81 hours and 45 minutes. October 18, the train actually consumed 65 hours and 15 minutes. On June 1, 1902, this train, in the same district, consumed 74 hours and 10 minutes. MR. SEVERANCE. What was the schedule time then—just the same? WITNESS. Just the same. On June 9, 1902, 77 hours and 10 minutes. MR. SEVERANCE. Did you intend to give only two days in June? WITNESS. That is all I find, Mr. Severance. I think one sheet has been mislaid. I can obtain it if necessary. October 3, 1902, 123 hours and 45 minutes. Q. What was the schedule then? A. 58 hours and 25 minutes. October 11, 1902, 97 hours and 40 minutes. October 19, 1902, 129 hours and 30 minutes. December 21, 1902, the schedule of this train was lengthened to 64 hours. On June 2, 1903, the train consumed 92 hours and 20 minutes. June 10, 1903, 83 hours and 25 minutes. June 19, 1903, 108 hours and 18 minutes. October 4, 1903, 81 hours and 35 minutes. October 11, 1903, 81 hours. October 22, 77 hours and 50 minutes. This information was prepared by some of our operating officers who are now here, and who had charge of the conduct of the business at that time, and who furnished this information."

Time lengthened out.

(4207) In October, 1907, this train was lengthened out to 101 hours from Council Bluffs to Ogden. It was afterwards changed to 100 hours and 45 minutes.

Number of train changed to 53.

Number 53, formerly called Number 9, has of late years had a good many sections in addition to the regular train; sometimes 3, 4, 5 and 6, depending upon the season of the year. These various sections all ran upon the same schedule as nearly as possible.

Other freight service.

In addition to train Number 53 between Council Bluffs and Ogden there was organized (witness believes in 1904 or 1905) train Number 55, which carried the freight from Council Bluffs and from the Kansas territory (connecting at Chey-

enne) to Montana, Idaho, Oregon and Washington points via Granger. That train very frequently ran in sections of 3 and 4, and sometimes as high as 6 and 7. That train was not able to make its schedule time any more than the other. The green fruit service, eastbound, in 1903, represented 9,711 cars for the fiscal year. This traffic in 1908 represented a total number of 19,748 cars. That traffic was carried usually on a schedule of 80 hours generally speaking; sometimes a little more or a little less, but 80 hours was basic time from Ogden to Council Bluffs.

No. 55 not able to make schedule time.

Green fruit service.

That traffic was confined to east-bound movements entirely. Frequently live stock was added to this train. (4208) These green fruit trains were run in sections. Sometimes there would be 4 and 5 a day. It depended entirely upon the season. Their preference was to send the stuff largely by the more southern lines during the more severe weather and via the northern lines during the Summer weather. The U. P. had another through schedule train, hauling meats, in the year 1907 and prior thereto. "When this traffic began to increase so rapidly, we finally determined upon the feasibility and advisability of inaugurating, three times a week, a train carrying from Council Bluffs to Ogden packing house products and other perishable freight, rather than have it carried indiscriminately upon what was known as manifest trains. Those trains when inaugurated were pleasing to the patrons, to the extent that they were well patronized from the outset and are to-day." All of these trains just referred to are through trains.

Train for packing house products.

There are conditions existing on the line of the U. P. which make it decidedly more difficult to operate trains, than upon the lines of the eastern and middle states. "In the first place, we are compelled to lift a car, in the first 550 miles, about a mile and a quarter in height; from a one thousand foot altitude at Omaha to slightly over eight thousand feet at the summit of the Rocky Mountains. And the weather conditions, the wind velocity, is a very serious feature in our operation, and prevails almost continuously in the North Platte and Cheyenne territories." The U. P. trains are compelled to climb in crossing the Rocky Mountains three ascents of importance; from Cheyenne to Buford, that is over Sherman Hill; from Laramie to Creston, over the Continental Divide; and from Granger to Aspen tunnel, in the vicinity of Evanston. Naturally at that altitude there are other climatic conditions prevailing in the Rocky Mountain district, which make it difficult to operate trains. "Our snow and low temperature are more general and cover a larger number of months than they do in the lower altitudes. For example, I took temperatures, from December 1, 1909, to January 15, 1910, and found the average temperature at Evanston, Green River and Rawlins, four degrees above zero. (4209) The coldest weather experienced was forty degrees below, and the most torrid weather, thirty-nine above. Q. That is the country in which you have nine months of winter and three months late in the fall? A. Sometimes we think we have fourteen months of winter.

Altitudinal and atmospheric obstacles.

Eccentric climatic conditions.

Operating conditions on U. P. in fall of 1907.

"Q. What were the operating conditions on the Union Pacific Railroad between Council Bluffs and Ogden, in the summer and fall of 1907, preceding the lengthening out of your schedule trains?

Congested condition.

A. We had increased our passenger trains to such an extent, and the freight traffic had increased to such an unexpected extent, that we were substantially congested almost continually, from one end

San Francisco earthquake.

of the line to the other. Some of this had primarily been brought on to us by the San Francisco earthquake in April, 1906. Having destroyed the terminal facilities of the Southern Pacific, we were compelled to hold cars back, by instructions, in our own territory; so it congested our terminals, it prevented the expedition of the movement of freight westbound, and even, in some instances, we had to appropriate our new second track for the storage of this equipment; and this difficulty continued well up towards what is known as the

Why trains did not and could not make their schedule time.

panic month of 1907"—October, 1907. The schedule trains at that time were not making their schedule, between Council Bluffs and Ogden. They could not; because there were entirely too many trains to pass; too many trains to meet. The speed assigned to these trains was impossible of execution; because of the large amount of traffic and the numerous trains to meet.

Receiving lines congested.

The actual time of the schedule trains in September and October, 1907, between Council Bluffs and Ogden, "fluctuated considerably, because, being unable to deliver our freight to the western lines, the matter of time was not a question of such vital importance; for after we had reached the western terminal, during a large portion of 1907, we were compelled to retain until convenience of reception of the receiving lines." Witness thought that under unobstructed conditions, trains were then actually taking about 100 hours from Council Bluffs

Why schedule of trains was lengthened.

to Ogden. The time of the schedule trains, including 53, was lengthened out in October, 1907, "because, after conferring with all of our operating officials, it was a matter of great concern to us, and some pride, and some dissatisfaction, that we were not able to make

Effort to solve problem.

a printed schedule, and we tried to find a remedy. We first applied it a number of times in try- (4210) ing to force the business, to run the trains faster and to instill into the division officers and the men its necessity. All of that was gone over repeatedly, from week to week,

Decided to utilize wasted power.

and month to month, without any apparent results. We then decided that it was very much better for us to realize the efficiency of the power, handle more cars to the train, operate less trains on the road, and cover the ground more regularly and systematically—which has substantially been done, barring the unusual conditions which occur in the operation of property since that time." By utilizing the full power of the locomotive, witness meant that "a locomotive is gauged in its capacity by the speed desired; by the grades it overcomes; and also by the weather conditions prevailing at certain seasons of the year; and in changing this rating we added from one to

Increased train tonnage and reduced meeting points.

two and three hundred tons more to the train. In that way we were enabled to overcome the congestion and permanently remove it." The reserve power of the locomotive which before that time had

been used in the attempt to make the schedule time—an impossible schedule—was utilized by adding greater tonnage to the train. And the effect of that was to remove the congestion and to permit the freer operation of the trains, and with greater safety.

Prior to the time of lengthening out the schedule, every possible effort was made to make the time upon the published schedules, with an absolute failure. When the schedule time of 53 was made 100 hours, and the time of other trains was lengthened out, "we were applying the practice to the schedule instead of the schedule to the practice." Witness thought there was no question, but that the lengthening out of these schedules was an absolute operating necessity; "because it is a matter that none of us liked to do, and we resisted it for months, until we were absolutely compelled to recognize it; until we had so increased our trackage facilities that we were able to handle this traffic with less difficulty. * * * Nobody is perfectly satisfied with a railroad, individually. But I have not had any complaints about our character of service, for some time. We have had a great many compliments."

Schedules changed to correspond with actual performance.

Change in schedules an operating necessity.

Service has been complimented.

(4211) The traffic is heavier to-day than at any time in the history of the property. The method adopted in October, 1907, made the general movement of the traffic more uniform and less discriminating than it had been previously. In 1901 the U. P. moved a few cars quicker, and a great many slower. Now it moves them all in such a way that the average is very much better for the entire movement.

Traffic heavier than ever.

General movement of traffic more uniform.

Average much better for entire movement.

The statistics of the American Railway Association show that from January, 1907, to February, 1909, U. P. equipment from Council Bluffs to Ogden moved at the rate of 41½ miles per car, per day; this includes all classes of freight service, and takes in the U. P. Railroad as a whole. The same statistics show the following movements upon other large railway systems in the United States: on the Santa Fe road between Chicago and Albuquerque, Chicago and Kansas City, Kansas City and Denver 26.7 miles; on the G. N., St. Paul to Seattle 21.5; on the N. P., St. Paul to Portland, 21.4; on the Rock Island, Chicago to Denver, 23.3; on the C. B. & Q., Chicago to (4212) Denver, 29.6; on the C., M. & St. P., Chicago to Seattle, St. Paul to Seattle and Chicago to Omaha, 24.7; on the Pennsylvania during the same period from New York to Chicago, 23.9; on the New York Central during the same period 25.2.

Car movement per mile per day much better on U. P. than on other lines.

The average speed in miles per hour of through passenger trains as shown by the same statistics, is as follows: U. P., Omaha to Ogden, 30.7 miles per hour including stops; Omaha to Denver 34.3 miles per hour; Omaha to Portland, 29.6; Omaha to Frisco, 27 5; Omaha to Los Angeles, 31.8. Santa Fe, Kansas City to Los Angeles, 27.9; Canadian Pacific, Winnipeg to Vancouver, 25.3; G. N., St. Paul to Seattle, 28.7; N. P., St. Paul to Portland, 27. This information as to the average speed of passenger trains is for the year 1909. The schedules of passenger trains are frequently

Average speed of passenger trains.

changed. It would be possible to operate a freight train between Council Bluffs and Ogden in 54 hours, at the present time, but only by side-tracking passenger trains, side-tracking mail trains, side-tracking live stock, side-tracking fruit, side-tracking manifest trains, and taking some risks in operation. The average speed would be about 18½ miles per hour, including stops. As to the maximum speed necessary to operate a train on a 54-hour schedule: "From Omaha to Ogden, about 70 per cent. of our mileage is an ascending grade, and on that ascending grade the time would naturally (4213) be slower than it would be on the descending grades. The speed would probably be, at some points on that entire district, as high as 40 miles per hour, if not more." Witness regarded that as a reckless rate of speed for a freight train. The service on the U. P. is being given the full benefit of all the betterments which have been made and to which he has testified. The traffic is being handled to the best possible advantage for the benefit of the shipper, with the present facilities. There are very few complaints as to service. There will always be some complaints.

From Omaha to Ogden 70 per cent of mileage ascending grade.

Service being given full benefit of betterments.

Reduction of U. P. mileage.

The mileage of the U. P. in the aggregate has been reduced from Omaha to Ogden, 40 miles, or substantially that since the close of the receivership. All of it was done prior to 1904, except the Lane cut-off. At the time the U. P. was reorganized witness was employed by the O. R. & N. While employed by the O. R. & N. witness had a superficial knowledge of the U. P. property. He was not very familiar with its physical condition at that time. (4214) Witness understood that immediately after the close of the receivership very extensive plans were set on foot to improve the road. After witness became acquainted with the property he found that improvements had been made. They were made during the administration of Mr. Burt, the first president of the reorganized company. He continued as President to the Fall of 1903. Witness went to Omaha shortly after his retirement. At that time the Lane cut-off had not been built. It was built under the administration of witness.

Improvements made by Mr. Burt.

Substantially all of these lines that witness described in detail, where shortening in mileage had taken place, had been finished prior to his assumption of his duties there, except that there was considerable ballasting necessary. The changes of line had been made but there was considerable unfinished work in the ballasting of track. These improvements that were made to the road, aside from reducing the mileage to the extent of 40 miles, eliminated a great deal of curvature also. Elimination of curvature aids very considerably in places in the hauling of more tonnage with the same engine. (4215) The improvements which were made, shortening the line 40 miles, cutting out a great deal of curvature and reducing the grades, made it possible to operate the same amount of tonnage more easily, assuming the tonnage remained the same. From what witness has been told he would not care to operate the road under any conditions as it was operated in 1900. It was in such bad physical condition and he believed the rate of speed was unjustified even under good con-

Improvements in grades, etc., facilitated operation.

ditions. (4216) In addition to the other improvements several hundred miles of double track have been put down. "Q. Is that any aid to you in operating your road? A. Unfortunately all the improvements we have made up to a recent date, have been more than absorbed by the increase in traffic." The double track is an aid but it is insufficient. The Rock Island uses the U. P. track between Topeka and Kansas City. The primary purpose of double tracking between Topeka and Kansas City was to provide the facilities for both Companies, and ours was suffering as much as they were.

Increased traffic absorbs additional facilities.

(4217) Both suffered in trying to move that traffic over a single track road. No more double tracking has been done on the Kansas Division because the Company is building a cross line from Menoken to the vicinity of Marysville, which connects with the St. Joe & Grand Island and then intersects U. P. main line at Grand Island. It shortens the distance from Kansas City to Cheyenne by that route about 120 miles as against the Denver-Cheyenne route. The St. Joe & Grand Island tracks are used under a contract. On the cut-off referred to about 130 to 140 miles of the St. Joe & Grand Island is used. It required about 70 miles of new construction to make the connection (4218) between Menoken, the first station west of Topeka and a point on the St. Joe & Grand Island near Marysville, Kansas. There are 203 miles of continuous double track, right out from Omaha. Instead of completing the double track between Gilmore and Lane parallel with the old track at a cost of about $275,000, the Lane cut-off was constructed at a cost of $3,800,000. This shortens the mileage and removed water difficulties which the Company was subject to almost annually under the old location. The construction of the Lane cut-off reduced the Company's earnings. It made it accept less money for freight rates locally and passenger rates locally by shortening the distance. "We paid the premium of an investment of $3,800,000 for the purpose of reducing our rates." (4219) By building the Lane cut-off which was 11 miles long a saving in distance of 8.9 miles was made.

Distance from Kansas City to Cheyenne reduced 120 miles.

Lane cut-off and earnings.

The new passing tracks which were constructed were from 4,000 to 4,500 feet long. They are necessary to enable trains to pass each other. (4220) The passenger trains to-day are interfering with the movement of freight trains. They are the ones that are affecting the service. Witness has frequently seen 5 or 6 freight trains at one station waiting to get out. Under the time card rules the first train leaves as soon as the passenger train arrives; the next train does not leave until 10 minutes after; the following train does not leave until 10 minutes later; and the next train does not leave until 10 minutes later. The result is that the 6th train does not leave that side track until an hour after the first train has left. That is the condition caused by the operation of one passenger train past that station. The passing tracks referred to by witness have been constructed to facilitate the passing of trains, and the movement of traffic. "But when we have more freight trains than we

Freight movement obstructed by passenger trains.

Delay occasioned by trains passing.

really have passing tracks, as in many instances is the case, then our troubles commence seriously."

(4221) Witness has never seen such a surplusage of passenger trains as there are on the U. P. It is difficult and dangerous from an operating man's standpoint to have so much of that service because it is accelerated, and these freight trains must get out of the way of passenger trains. "There is a time card rule that does not permit them to take any chances, because we cannot stand accidents as we once stood them. That is the matter we are constantly trying to eliminate, and we are acting in safety lines." It frequently occurs that freight trains meet, one of them being on the long passing track and the other running through without stopping.

Car mileage per day.

The average miles per car per day testified to by witness was intended to include the various roads referred to as a whole; (4222) including the U. P. as an individual property but not the O. S. L. or the O. R. & N., it included the Santa Fe as a whole and the other lines as individual properties. The rate of movement per day on the Santa Fe was 27.6, including all that portion of the Santa Fe lines east of Albuquerque; the movement on the G. N., 21.5, included all of that road. The movement of 21.4 miles included all of the N. P. The movement of 23.3 would include all of the Rock Island. The movement of 29.6 would include all of the C., B. & Q. The movement of 24.7 would include all of the C., M. & St. P. The movement of 23.9 would include all of the Pennsylvania lines and the movement of 25.2 would include all of the New York Central lines.

Basis of car mileage.

The table or chart which witness used in testifying as to the average movement of freight cars per mile per day was made up by the American Railway Association Bureau, with headquarters in Chicago and New York. Witness thinks it was made up by Mr. Hale, whose office is 24 Park Place, New York. The auditor of each railroad furnishes the mileage and the cars upon a uniform form furnished by the Association to all the railroads that belong to it; and then the information is compiled systematically by Mr. Hale and reported to all the railroads who are members of that Association. (4223) The U. P. furnishes Mr. Hale with a total movement for the month. The information is furnished monthly under a printed form that he sends out to each railroad. The information gathered by Mr. Hale is published in a large monthly sheet, quite an elaborate sheet, giving the information collectively of all roads members of that Association. The information furnished by the U. P. includes all the freight cars that it owns; also the car mileage movement for the month and train mileage of all freight cars moved over the line. It included all foreign cars.

These figures are made up on the basis of the cars actually moved over the lines irrespective of what cars they are; (4224) and the number of miles in a day that all those cars are moved; and one is divided into the other and as a result you get the 41½ miles. In furnishing these reports to Mr. Hale the cars are all taken in their

entirety; they are not divided among the different portions of the system. The statement on the chart showing the average movement per car per day on the U. P. between Council Bluffs and Ogden, Council Bluffs and Denver and Ogden to Council Bluffs, green fruit, was made under the supervision of witness, in order to make a comparison of the main lines of the various companies shown on the chart. The average movement shown of 41½ miles per car per day was furnished by Mr. Hale. (4225) The mileage for the whole system is 41½ miles per day. That is on the Union Pacific Railroad proper east of Ogden. It includes the movement of cars on all branches as well as the movement of through business from Kansas City and Council Bluffs to Ogden.

Average car mileage per day on U. P. 41½.

The chart referred to shows the average speed in miles per hour of merchandise trains to be as follows: "Union Pacific from Council Bluffs to Ogden, 9.9; Union Pacific Council Bluffs to Denver, 11.5; Union Pacific from Ogden to Council Bluffs, green fruit, 12.4 miles; (4226) Santa Fe, Chicago to Albuquerque, 12.3, Santa Fe, Chicago to Kansas City, 14.4; Santa Fe, Kansas City to Denver, 14.4; Great Northern, St. Paul to Seattle, 11.8; Northern Pacific, St. Paul to Portland, 14.4; Chicago, Rock Island & Pacific, Chicago to Denver, 14.2; Chicago, Burlington & Quincy, Chicago to Denver, 14.4; Chicago, Milwaukee & St. Paul, Chicago to Seattle, 12.4; Chicago, Milwaukee & St. Paul, St. Paul to Seattle, 12.3; Chicago, Milwaukee & St. Paul, Chicago to Omaha, 16.4; Chicago, Milwaukee & St. Paul, Chicago to Kansas City, 16.6; Chicago, Milwaukee & St. Paul, Chicago to St. Paul, 12.8; Pennsylvania Railroad, New York to Chicago, 16.2; Pennsylvania Railroad, New York to St. Louis, 18.3; Pennsylvania Railroad, Chicago to New York, 15.9, dairy products; New York Central, New York to Chicago, 17.5; New York Central, New York to St. Louis, 20.4; New York Central, Chicago to New York, dairy products, 17. * * *

Average speed of merchandise trains.

"Q. Don't you know as a matter of fact that the Great Northern, except as it uses the Northern Pacific track for a little way up the Mississippi River from St. Paul, is a single track road? A. I would not so regard it, for the reason that, when I was up there they had a line known as the Fergus Falls division, running up to Crookston and Grand Forks and Moorhead; they had another line, running by the Breckenridge division running to Fargo and Moorhead and Grand Forks; they had another line running by way of the Breckenridge division, from Casselton to Larimore; and I understand they have since extended the Breckenridge division to some point in the vicity of Devil's Lake."

Double tracks on other lines.

(4227) He is not able to say what they have east of Devil's Lake, because he has not been over their line for a great many years. From rumor he thinks the N. P. has between St. Paul and Portland quite a number of patches of double track, from what he has been told, out in the mountains. He doesn't know, only as it is rumored. The Rock Island from Chicago to some point near Des Moines, he

thought was double track, but from there to Denver single track. The C. B. & Q. is double track from Chicago to Lincoln, you might say. Substantially so, as he understands it. "Q. * * * I am asking you as a general proposition if it is not true that a road may be quite largely double-tracked and still, quite a large portion of it being a single track road, you do not get the full benefit of your double track? A. No, we do not."

(4228) Witness thinks the C., M. & St. P. from Chicago to Seattle is a single track road most of the way after it leaves Minnesota territory. Its line from Chicago to Omaha is double-tracked considerable of the way; not all of the way. The Milwaukee road from Chicago to Kansas City is single track west from some point in Iowa near Marion. (4229) Witness would think the G. N. had at least 400 miles of double track by building those separate branches. As to the N. P. he does not know. The 400 miles of double track of the G. N. is spread out over a total mileage of about 2,000 miles from St. Paul to Seattle. "Q. The 400 miles that you testify to, something like 400 miles as I recall it, is spread out over nearly a 1,000 miles from Ogden to Council Bluffs, that is true, is it not? A. Yes, sir. Q. So that your percentage of double tracking is much clearly greater than that of the Great Northern? A. Yes, I will assume that."

Comparative speed of freight trains.

The slowest time made by the merchandise trains shown on the chart prepared under the supervision of witness, is on the U. P. from Council Bluffs to Ogden, being 9.9 miles per hour, and on the U. P. between Council Bluffs and Denver, being 11½ miles per hour. The Santa Fe from Chicago to Albuquerque makes 12.3 miles per hour. The green fruit trains make the run in 80 hours from Ogden to Council Bluffs. (4230) It is a class of traffic that is preferred over ordinary merchandise. The green fruit trains are handled at that rate of speed by an agreed arrangement that is satisfactory to the shippers and serves the purpose, and is as good time as can be made with the volume of traffic handled on that line. The agreement is part of an arrangement with the shippers of California fruit, so that they can have and depend upon uniform deliveries at eastern terminals, and in 15 cars or more. "They come to us very frequently in a less number of cars than that, but we undertake to give even the smaller amount of business that movement if it is possible to do so." The information in regard to the agreement with the shippers was received from the western connections of the U. P. It has been in effect for seven or eight or ten months.

Green fruit train agreement.

(4231) Witness is of the impression that the agreement referred to includes the entire time that would be consumed in moving the traffic to Chicago. Witness does not know what the total time consumed is. Prior to the 80-hour schedule "we ran the stuff more or less as best we could." Sometimes the time consumed was as high as 90 hours; sometimes a little less. (4232) Witness thinks that the U. P. collection of stockyards in the aggregate is better than the Milwaukee and Northwestern yards. "I think we have more of them. Q. But do you not undertake to compare

U. P. stock yards.

your yards with those of your competitors; only with those of your connections east of Omaha? A. I think our facilities are just as complete, but may not have as many rooms in them. Q. Your answer the other day gave the impression, to me, at least, that you intended to say that your feeding yards surpassed those of (4233) the Santa Fe, for instance, and the other lines in the west. Your language was rather general. A. Possibly I was misled, in making that remark, by the expressions made by the committee who represented the Stock Growers' Association of Wyoming. Q. Yes, you spoke of their being very well pleased with them. A. They examined these yards in advance, and were pleased with the extensive arrangements we were making to take care of that particular traffic."

Stock growers' association.

U. P. has large stock traffic.

The U. P. has a very large stock traffic originating in Wyoming, eastern Oregon, Idaho, and Nebraska. In order to handle this large traffic it is necessary to have feeding yards. The rigid enforcement of the Federal Law requiring railroads to unload, water and feed cattle every twenty-eight hours has increased the importance of feeding yards. About two years ago, or perhaps only a year ago, the law was changed, so that cattle can be kept in the cars 36 hours. (4234) "Q. Therefore, the law itself is not wholly to blame, is it, for the establishment of these feeding yards? A. We didn't have them before, to anything like the extent, nor located so near to each other. And when we studied the effect of this law, it made it necessary for us to put in additional facilities and enlarge the facilities we had, to provide against this contingency; because the law is pretty severe, when there is any failure now on the part of the transportation line. * * * Q. You said you had built 58 new stockyards. As a matter of fact, a large number of those were built to replace old worn-out yards, weren't they? A. No, there were a great many new ones built. This is only a portion of it. I could give you a much more elaborate statement than this."

The company was deficient in many of these necessities that other roads, who were not in the hands of a receiver, had been able to provide. This made large expenditures for improvements necessary, and required the company to do more rapidly what many others had done before. (4235) The passenger station at Omaha, owned by the U. P., is used by the Wabash, Illinois Central, Milwaukee, Northwestern, Rock Island, and Great Western Railroads; also the Missouri Pacific. The basis on which they come in there is that they pay the interest charge on the property, and the maintenance on a car basis. (4236) By the 16-hour law, the train crews are not permitted to be in service more than 16 continuous hours without 8 hours rest. The divisions were so long—160 miles or more—that they could not be covered within the time without laying up the crew and power at intermediate points. The same was also true of Sterling, Colorado. And, while he said that the cost was $120,000 to $130,000, he finds that in the case of them it was $170,000.

Tenants of Omaha passenger station.

Expenditures occasioned by 16-hour law.

Other roads make improvements.

(4237) The U. P. is not the only road that has made these changes, but how extensively it has been done on the other roads, witness does not know. Other railroads are putting in coaling stations of a modern type, but witness doesn't know whether they are doing it as extensively as the U. P. The U. P. began building the new roundhouses, about which witness testified, about two years ago. "We were giving the renewing of our main line preference, which was extensively done, and putting down second track on the theory that a second track was good for twelve months in the year, and with the roundhouses we suffered inconvenience only four or five months in the year." It was not because of the fact that up to two years ago the U. P. was rather hard up for money that it did not build these roundhouses. (4238) Preference was being given to other things. "There was a limit to men and material during those prosperous times. I was authorized to spend much more money than I could possibly spend, because I could not get the men and the material."

Ample funds but shortage of men and material.

Track scales.

Icing houses.

Pacific Fruit Express.

The question of building new roundhouses has been up continuously since witness came with the U. P. in 1904. "Money has gone into other improvements that we thought were more necessary at that time to move the business." The new track scales, which were built to replace old scales which were out of date, were a necessity to handle the business. The icing houses were built to take care of the freight traffic from Pacific coast states. (4239) The icing of fruit cars is handled directly under the instructions of the Pacific Fruit Express. "They are doing all the icing and making all the collections and we are simply a transportation line." The Pacific Fruit Express is owned jointly by the U. P. and the S. P., one-half of the stock being owned by each. The Pacific Fruit Express owns the refrigerator cars that operate over the S. P. and the U. P. and over the San Pedro Line. The icing houses are leased to the Pacific Fruit Express. A rental amounting to a fair interest on your investment, or something of that sort is paid.—usually 4 per cent, witness thought.

Interlocking plants built by U. P.

(4241) The usual practice is for the junior railroad company to pay the expense of installing interlocking plants, and to thereafter divide the maintenance. This, however, was not the case in hardly any of the instances referred to by witness, where interlocking plants were put in. A considerable burden of these crossing installations fell upon the U. P., which ought not to have been true under existing practices. As to whether the U. P. had to pay the expense of putting them in, in individual cases, or how the expense of maintaining them was borne, he does not know, because they are divided on a basis of function, and he thinks only one case has occurred since he came there, that is the Fremont crossing where the U. P. did not have to participate in the expense either for the entire installation or half of it, or some proportion. It is an advantage to both lines to have an interlocking plant. It is a life saver and a time saver. Witness believes that in connection with the system

of block signals and protection, interlocking plants are a necessity. "Q. Isn't it a fact that the railroads of the country are practically uniform in that belief—that as fast as they can do it, they ought to install interlocking plants? A. I think they believe that, but they do not all do it." (4242) It is done more on the eastern lines than on the western lines.

U. P. takes lead in steel car construction.

Witness thinks the U. P. was one of the initial companies in America that started building steel coaches; and that the construction of steel coaches is becoming more general. "There are, however, a great many of the large important lines that I think have no steel equipment, unless it may be Pullman equipment which they may get into their service." Witness does not believe they have been going into steel equipment very heavily until the last year or two. "There have been a great many features in connection with that character of equipment that have made it experimental, such as the heating of those cars in the winter season." The tendency of all railroads has been to increase the size of their equipment, but they are not all building 50 ton cars. U. P. cars are all being built 50 tons, and some roads, witness thinks, are still building 40 ton cars. (4243) If the U. P. were to-day handling cars of the size it originally had of a capacity of 20,000 lbs., or 10 tons, and were to handle a train on the basis of the present engine, "we probably never would get out of one terminal until we had gotten into another. Q. It would make a very long train? A. Yes."

U. P. could not move its traffic, using small cars.

Overland Limited as good as 4 years ago.

Witness thinks the U. P. runs as good an Overland Limited train now as it did three or four years ago. The barber shop was taken off because it did not seem to be necessary. (4244) "This is the condition to-day: I find we have no compartment car. We have, on the Overland Limited, a dynamo-baggage car, a diner, a sleeper with 10 sections and with two staterooms; another sleeper of 10 sections and two staterooms; a sleeper of 12 sections. (All of them have drawing rooms, of course, in addition.) Another sleeper of 12 sections and drawing room; another sleeper of 10 sections and drawing room; and a composite observation car: * * * Q. Then I am right about it, that you have taken off that compartment car, am I not? A. Yes; but there are some cars there that have more than the ordinary number of staterooms, that are now in that service."

Effect of convention travel on volume of passenger traffic.

(4246) The average number of passenger trains one mile one day, as shown by statistics testified to by witness, for the year 1908, was 15.37; for the year 1909, it was 12.28. "Q. How did that happen to drop off? A. That is affected by large conventions, the Shriners, Democratic Convention, by the Elks, by the Woodmen, the Yukon Exposition. A number of those things will account for that fluctuation." Witness states that the year 1908 was unusual, "but it is plenty high enough now." 12.28 is very high. Passenger trains one mile one day covers all passenger trains on the main line between Council Bluffs and Ogden, whether

they are local or otherwise. There are a few trains that do not go clear through. They run out of Omaha.

Local trains.

(4247) There is one train running out of Ogden that does not go clear through. "Q. How many out of Omaha that do not go clear through? A. One goes to Valley, one goes to Grand Island and one to North Platte, and some go to Julesburg, and the rest go through. Q. And those are all included in this statement? A. By the different districts, yes." The item "Mixed Carloads of Merchandise," being the last item in the list of 34 articles testified to by witness as manifest articles, includes merchandise consigned to a number of different parties in the same territory. It is high class stuff. "Q. As a matter of fact, the high-class stuff, as you call it, was pretty well covered by these 34 articles, wasn't it? A. No, sir. Q. I mean things that merchants are particularly anxious to get in a hurry. A. Oh, no, we have a very large quantity of stuff there that we gave a much slower service on." That list was enlarged, because "the traffic people insisted on making a more general movement of a large portion of the stuff offered rather than continue the practice of moving a small portion at a faster speed and a large portion at a slower speed, because if the Union Pacific service covered a large quantity of articles, it gave them very much less trouble, and less complaint was made as to the movement of the stuff. Therefore it was handled under a manifest system, while other stuff not included was left to move along without a manifest report, as best it could."

Why list of manifest freight was enlarged.

(4248) Mr. Lincoln, the superintendent of transportation, who is here, picked out certain days in 1900, 1901, 1902, and 1903, as to the movement of these fast freight trains, and showed that they moved late. Witness suggested to him that he pick out, regardless of what it would produce, three days in each of those months. Witness did not tell him not to take the same three days in the various months; because there were some days there for which he told the witness he could not get the dispatcher's sheets to trace through; therefore he took the next nearest day. Witness does not know how it happens that in picking out these days Mr. Lincoln has taken, in practically every instance, not the same day or not the same days of the month in the different years, but different days; that is, instead of taking, for instance, June 1st in each year, or June 2nd, or June 10th, or June 20th, he has skipped around in almost every instance. Witness does not know how the trains ran on any of the other days in these months except the isolated days Mr. Lincoln has picked out here in some way or other. The figures on that can be furnished. "I have no knowledge of that, but from my knowledge of the manner in which the traffic moves I have not any doubt but what that represents an average, and it represents a (4249) very much better average than it will if you will let me take the winter months.

Dates selected to show actual movement of freight trains.

"MR. SEVERANCE. I would ask you, then, to be kind enough to have prepared a statement which will show the same information

Statement showing movement of freight trains.

about the movement for the entire month of June in each of the years named and the entire month of October in each of the years named, so we will see what kind of results we get from a complete expose, instead of these isolated days—not some days in each month of each year. MR. LOOMIS. How long will that take? WITNESS. Mr. Lincoln can say better than I. MR. LINCOLN. It will take from 30 to 45 days to work that up. MR. SEVERANCE. That will do very well. MR. LOOMIS. We will permit you to examine the records and work it up yourself. MR. SEVERANCE. I don't know but I will be willing to do that. MR. DUNNE. I think the record ought to show that those days were taken as representative and typical, and that the enumeration of a multitude of days would involve extreme labor and expense. Now let us be fair about this. MR. LOOMIS. I think the record shows that already, Mr. Dunne. MR. SEVERANCE. Mr. Dunne, I don't think I have been unfair about anything in this case, and you know I have not, or would know I have not if you had been in the case from the time it began. MR. DUNNE. You talk about isolated days. Your manner is somewhat disparaging. MR. SEVERANCE. I do not think much of these days, I will admit that. MR. DUNNE. I will argue that with you later. MR. SEVERANCE. All right. We won't quarrel about it. I will make the request and let it stand just as I have made it. MR. DUNNE. Mr. Loomis, haven't you answered Mr. Severance's request? MR. LOOMIS. Yes, I have answered it by saying we will submit to him the records if he will furnish clerks to make the compilation. I do not think we are under obligation to furnish clerks to work three or four months or a long period of time to get up the data he wishes. The records are open for his inspection, and he can make such extracts from them as he sees fit at any time."

Records tendered for use of counsel.

As a rule the U. P. is now and (4250) has been for five or six months substantially making its time under this present schedule of 100 hours and 45 minutes. (4251) Mr. Kruttschnitt was not a party to any of the conferences of operating officials prior to the lengthening out of the time of train No. 53 in October, 1907. He was not advised of those conferences. "Q. He knew nothing about them? Is that the fact? A. Why, he would know about it when the time table was published. He was conversant with the fact that the train was not making the time and was continually urging on us to make that time, and we were continually urging the men to make it, and I think they realized in the Chicago office after a while that there were some things that were impossible."

Now making schedule time.

(4252) The time of that train was lengthened out as a matter of necessity, in order to move the traffic. "Q. And the matter of economy (as testified to by Mr. Kruttschnitt) did not figure in it? A. No sir, not with us." In order to operate a freight train between Council Bluffs and Ogden in 54 hours at the present time (4253), "we would sidetrack a great many of those trains (passenger trains, mail trains, livestock, fruit and manifest trains), but not all of them."

Slowing of train a necessity and not for economy.

Some of the passenger trains would have to be sidetracked. He would try not to sidetrack mail trains. "We have done it." The average speed of the Overland Limited between Omaha and Ogden is 29.9 miles per hour. It frequently runs from 70 to 80 miles an hour to make up time from its connections. There would be times, if near a terminal, when the dispatcher, if he desired to get No. 53 into the Ogden terminal on time, and the passenger train was on time from the west, would probably sidetrack the passenger train to let the freight train by. It has been done a great many times, it was not unusual.

"Overland" frequently makes 70 to 80 miles per hour.

(4254) "You know this train-service business is one that I am up with every day and every hour, and the volume of traffic cannot be governed by any set paper rules; it has got to be governed by the conditions, and those conditions are always changed by weather, by broken wheels, by drawbars pulled out, by late connections, and by so many things that you would not let me say to you that we would not or would sidetrack a passenger train, because we would be governed entirely by the conditions surrounding that particular train service at that time." (4255) Witness spoke of the fact that during 1906 and 1907 there was no special reason for the U. P. to try to make fast time to Ogden with California freight on account of the delays experienced from its connections—there was no special incentive to make the time because the delays on the Central Pacific the U. P. couldn't get rid of. There was no congestion on the Central Pacific a year ago now, in the winter and spring of 1909. A year ago when the U. P. was making such poor time, that was because of the increase in its own traffic which began to embarrass it then. Its own business has been growing constantly. And its facilities had not been increasing in ratio to the increase of the business. The U. P. tried to keep pace with its growth in business; but could not. It hasn't caught up yet. "We are getting more double track and will be in very superior position after we get in service what is now under construction, and it will enable us to accelerate time, and we do so."

Movement of traffic governed by conditions.

Facilities not increased in ratio to traffic.

Struggling to keep pace with business.

(4256) Witness' attention is called to his direct testimony to the effect that by making this lower schedule for train No. 53, he was able to get the maximum of efficiency from his power. The more you can load into a train, up to the maximum of efficiency of your locomotive, the more tonnage you can carry, the cheaper you can handle it. That is a basic principle, but it was not the principle in the operation of this main line from Council Bluffs to Ogden. As a general proposition that is true—that it is economical to load all you can into one train so long as you do not exceed the power of the engine. Adding to the tonnage in the train and the lengthening of the time of the train, did not make it cheaper per ton to transport the traffic from Omaha to Ogden—not by actual practice on that main line because the U. P. had not really been doing much better than on the schedule is now making. "Q. * * * You gave a selected lot of days on which the trains moved, and out of the

A basic principle in the loading of tonnage.

whole number that you gave there were only four days where the time consumed was longer than the present scale of 100 hours and 45 minutes, and there was one selected day, June 11, 1900, when there were only 58 hours and 10 minutes, and it ran from that up through the sixties and seventies and eighty, all of them (except those four days) faster than the schedule that you now publish. A. Yes. Q. In view of that wouldn't you want to modify that last answer? A. That is, before 1904. (4257) Q. Yes. A. And since 1904—I gave the dates of the various changes in the schedule, and in 1906 and 1907 and portions of 1908 our schedule as actually made was considerably longer than 100 hours, in quite a number of cases."

Effect of panic on volume of traffic.

The traffic on the main line between Ogden and Council Bluffs did not fall off a great deal after the panic of October, 1907. In 1908 the tons of the U. P. one mile were 7,718,508,000; in 1909, it was 8,064,882,000. For the year ending June 30th, 1907, it was 8,111,666,457. The falling off between the year ending June 30, 1907, and June 30, 1908, was less than 400 million tons out of a total of about 8 billions. (4258) No. 53 was lengthened out early in October, 1907, making it coincident with the panic. Notwithstanding the falling off of tonnage to the extent of 5 per cent. about 400 million tons, witness did not deem it prudent to restore former faster schedules. "Q. And you have since maintained it although you were all the time increasing your facilities? A. We are not increasing our facilities during the winter months. Q. Not this winter, perhaps. A. No. Q. But you were during last summer? A. Yes. We will give you ample service this summer."

Ample service will be given.

Live stock train movement.

On livestock the company aims to make 20 miles an hour from Granger to Omaha, including stops. An effort is now made to move livestock faster than green fruit, because of the 28-hour law. (4259) Witness does not know what the total time would be from Granger through to Chicago. The packing house trains, which run three times a week from Omaha to Ogden, make it in 93 hours. They run through solid. Packing house products are not carried in other trains.

Highest grade between Co. Bluffs and Julesburg, 66 feet.

The highest grade between Council Bluffs and Julesburg is 66 feet. (4260) It is located between Omaha and Lane. The highest grade between Lane and North Platte is 31.7 feet. The maximum grade between Grand Island and North Platte is 22 feet; between North Platte and Sidney 34 feet; between Sidney and Cheyenne 37 feet. It is 516 miles from Council Bluffs to Cheyenne. The maximum grade west of Cheyenne going over Sherman Hill is 82 feet.

Maximum grade 82 feet.

Witness thinks the minimum grade there is 43 feet. (4261) Along the valley of the Platte, which the U. P. follows through Nebraska, the grade is almost a water grade. The maximum grade, in order to get over the Continental Divide west of Laramie, is 43 feet. The minimum grade is about the same thing. That climb runs from Rawlins—it is nearly that. "We have some little drop-downs at

Maximum grade, Continental Divide, west of Laramie, 43 feet.

Some of the passenger trains would have to be sidetracked. He would try not to sidetrack mail trains. "We have done it." The average speed of the Overland Limited between Omaha and Ogden is 29.9 miles per hour. It frequently runs from 70 to 80 miles an hour to make up time from its connections. There would be times, if near a terminal, when the dispatcher, if he desired to get No. 53 into the Ogden terminal on time, and the passenger train was on time from the west, would probably sidetrack the passenger train to let the freight train by. It has been done a great many times, it was not unusual.

"Overland" frequently makes 70 to 80 miles per hour.

(4254) "You know this train-service business is one that I am up with every day and every hour, and the volume of traffic cannot be governed by any set paper rules; it has got to be governed by the conditions, and those conditions are always changed by weather, by broken wheels, by drawbars pulled out, by late connections, and by so many things that you would not let me say to you that we would not or would sidetrack a passenger train, because we would be governed entirely by the conditions surrounding that particular train service at that time." (4255) Witness spoke of the fact that during 1906 and 1907 there was no special reason for the U. P. to try to make fast time to Ogden with California freight on account of the delays experienced from its connections—there was no special incentive to make the time because the delays on the Central Pacific the U. P. couldn't get rid of. There was no congestion on the Central Pacific a year ago now, in the winter and spring of 1909. A year ago when the U. P. was making such poor time, that was because of the increase in its own traffic which began to embarrass it then. Its own business has been growing constantly. And its facilities had not been increasing in ratio to the increase of the business. The U. P. tried to keep pace with its growth in business; but could not. It hasn't caught up yet. "We are getting more double track and will be in very superior position after we get in service what is now under construction, and it will enable us to accelerate time, and we do so."

Movement of traffic governed by conditions.

Facilities not increased in ratio to traffic.

Struggling to keep pace with business.

(4256) Witness' attention is called to his direct testimony to the effect that by making this lower schedule for train No. 53, he was able to get the maximum of efficiency from his power. The more you can load into a train, up to the maximum of efficiency of your locomotive, the more tonnage you can carry, the cheaper you can handle it. That is a basic principle, but it was not the principle in the operation of this main line from Council Bluffs to Ogden. As a general proposition that is true—that it is economical to load all you can into one train so long as you do not exceed the power of the engine. Adding to the tonnage in the train and the lengthening of the time of the train, did not make it cheaper per ton to transport the traffic from Omaha to Ogden—not by actual practice on that main line because the U. P. had not really been doing much better than on the schedule is now making. "Q. * * * You gave a selected lot of days on which the trains moved, and out of the

A basic principle in the loading of tonnage.

whole number that you gave there were only four days where the time consumed was longer than the present scale of 100 hours and 45 minutes, and there was one selected day, June 11, 1900, when there were only 58 hours and 10 minutes, and it ran from that up through the sixties and seventies and eighty, all of them (except those four days) faster than the schedule that you now publish. A. Yes. Q. In view of that wouldn't you want to modify that last answer? A. That is, before 1904. (4257) Q. Yes. A. And since 1904—I gave the dates of the various changes in the schedule, and in 1906 and 1907 and portions of 1908 our schedule as actually made was considerably longer than 100 hours, in quite a number of cases."

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Maximum grade, Continental Divide, west of Laramie, 43 feet.

Solon and Riner, and the 1 we make the final climb to Creston." The Continental Divide is at Creston. The climb from Rawlins to Creston is from 6,741 to 7,102 feet, in a distance of 29 miles. "Q. That is a distance of 361 feet that you have to raise the train—6,741 to 7,102—in 29 miles, which would be only an average of 13 feet to the mile. Aren't you mistaken about that being a steady climb of 43 feet to the mile. A. I just stated the drop-down at Solon and Riner. Q. Then you do not have a regular pull of 43 feet; that is your maximum? A. Three pulls, that is."

Time of through freight trains.

The next hill is between Green River and Aspen. Green River is 90 miles from Aspen Tunnel. The station at Aspen Tunnel is Altamont. (4262) The maximum grade between Green River and Altamont is 43 feet. The schedule time of train No. 55 between Council Bluffs and Granger is 78 hours and 20 minutes. (4263) Witness is unable to state the time consumed by that train in getting to Portland. Witness thinks that the time of the Portland train No. 55, was lengthened out in October, 1907. Train No. 53 carries the Los Angeles traffic from Omaha in connection with the San Pedro. It it the same train that carries the San Francisco business. The time of freight trains to Denver from Council Bluffs is 37 hours and 45 minutes. (4264) Witness does not recall any change made in the time of that train in October, 1907. Several changes have been made since that time by increasing its speed. The business into Colorado common points is highly competitive, as between the U. P. and the Burlington and the Rock Island, "although we have never tried to take some business from Colorado that other lines take." The fact that that business is competitive may have been partially, but was not entirely, responsible for the reduction of the U. P.'s time, making better speed. It was to get an earlier delivery in its freight terminals in Denver, so as to overcome any delays that it might experience in transit.

Speed of Denver train increased to get earlier delivery.

Bad order cars included in car miles per day.

(4265) The length of the Rock Island Route from Chicago to Colorado common points is longer than the Northwestern-Union Pacific Route. The average movement of 41½ miles per car per day includes all cars that are in bad order, (4266) in the shops. It included everything. The stock trains are moved at 20 miles an hour considerably for the reason that 70 per cent. of our ascents are westbound, and any train moving eastbound can make its time very much easier than it can westbound, it runs so much faster; and witness has no objection to running a train, as he does right along, at 18 and 20 miles an hour. That is not reckless running, eastbound, not with the conditions the U. P. has. He would not consider it reckless running westbound if he could make it, but 20 miles are made so much easier eastbound, downhill, than 20 miles westbound, uphill. "Q. I understood you to say that you regarded the speed made by the 54-hour train as a reckless rate of speed, and unsafe. A. That train ran 45 and 50 miles an hour. Q. You would regard a westbound freight train now, scheduled at 20 miles an hour, as being a reckless rate of speed? A. No, sir, I would not

care to run a freight train at that speed any more than the New York Central or the Pennsylvania would. Q. You would regard it as reckless railroading. A. I would not regard it as reckless; I would regard it as unwise. Q. And you would regard it as reckless to run at 17 or 18 miles an hour, scheduled that way? A. No, I would not regard it as reckless to run at that rate of speed under proper conditions."

Unwise speed.

Referring to the chart from which witness has testified, the information under the heading "Average miles per car per day, all classes of freight service, January, 1907, to February, 1909," was furnished by the American Railway Association. That includes the information as to all of the railroads named on the left of the chart. In order to show the comparative merits of the various speeds used by the different railroads, witness placed upon the one side, the speeds of the general merchandise freight trains between main points upon those railroads, and upon the other side, the average miles each car traveled per day. (4267) Witness believes that better results can be obtained on the U. P., in view of traffic conditions, by running its general merchandise freight trains at an average speed of 10 miles per hour between Council Bluffs and Ogden, than by running them at a higher rate of speed. The chart in question was prepared in order to show whether or not witness' theory on this proposition was effective. It shows upon the one side the speed made by the merchandise trains of these various roads, and upon the other side the actual average movement per car per day for the entire lines.

Better results obtained at average speed of 10 miles.

In getting the information from the American Railway Association it was necessary to take it for the entire railroad. It was not possible to get the movement per car per day on the main line of the U. P. between Council Bluffs and Ogden, but the U. P. had to be taken as a whole. The same is true of the other lines shown on the chart. Witness could obtain, however, in order to make as close comparisons as possible, the actual scheduled speed of the trains upon these different lines between different points; for instance, he could get the speed of the merchandise trains of the U. P. between Council Bluffs and Ogden, and put that down. He could get the average speed in miles per hour of the merchandise trains on the U. P. between Council Bluffs and Denver and between Ogden and Council Bluffs on eastbound traffic, and that was all put down, and then he could get the average speed in miles per hour of the main line trains of the Santa Fe and the other roads named on the chart. "Q. And you placed the one opposite the other for the purpose of making a showing as to the effectiveness, the efficiency, of these various rates of speed in the transportation of general merchandise? A. Yes."

Information necessary to ascertain effectiveness of various rates of speed.

By doing that, witness shows on the chart that although the U. P. runs its freight trains at an average speed of 10 miles per hour between Council Bluffs and Ogden, that the average miles per car per day of all cars in service is 41½ miles, (4268) on the whole

Speed of U. P. trains more efficient than that of other lines.

road and that on the Santa Fe, although they run their freight trains faster, they do not get the car movement per day that the U. P. gets. The car movement upon the Santa Fe, the whole road, is 26.7 as against 41.5 on the U. P.; on the G. N. 21.5 as against 41.5 on the U. P.; on the N. P. 21.4 as against 41.5 on the U. P.; on the Rock Island 23.3 as against 41.5 on the U. P.; on the C., B. & Q. 29.6 as against 41.5 on the U. P.; on the C. M. & St. P. 24.7 as against 41.5 on the U. P.; on the Pennsylvania Lines 23.9 as against 41.5 on the U. P.; on the New York Central Lines 25.2 as against 41.5 on the U. P.

Expenditures necessary.

Improvements the best.

The chart about which witness has been testifying is introduced in evidence and marked Defendants' Exhibit 153 and faces page 4,268 of the record. (4269) No money was spent on betterments that did not serve some useful purpose in connection with the operation of the railroad. Witness considered all the expenditures made as absolutely necessary. Witness believes the standards of the U. P. to be as good as could be adopted, and "I think they average high—very high—with any western line. * * * Mr. Harriman's instruction to me when alive, was that he did not object to furnishing money, but he wanted the improvements so well made that nobody could follow and change them." Witness believes he carried out those instructions absolutely. A good many of the improvements, such as block signals and the like, could have been eliminated if a different policy had been followed. The object in following the policy which he did was "to provide the very best of facilities for the safe operation of the property and the accommodation of the public."

Improvements on contiguous lines.

(4270) The railroads located in the immediate territory of the U. P. are the Chicago-Rock Island, the C., B. & Q., the C. & N.-W., and the Missouri Pacific—the D. & R. G. Witness does not know of any pronounced improvements of those lines in U. P. territory, except the Burlington's Milford cut-off at Lincoln, Nebraska. Witness does not know of any attempt to improve any of those lines to any extent whatever as compared with the U. P. (4271) Referring to the days which were selected to show the actual running time of train 53. "I asked Mr. Lincoln to select three days in the month of June and three days in the month of October, spread through the month the best he could, to indicate to me just what those trains actually did, and that was the basis upon which the information was obtained." In order to get a typical showing of the manner in which those trains were performing; and for that purpose only.

Desired to ascertain actual running time.

Trains were running late.

Witness had personal knowledge as to the time trains were making just prior to the lengthening out of the schedules in 1907, and knows that they were not making their schedule. They were all running from one hour to ten, fifteen, and twenty hours late, as the case might be, and it was an absolute operating necessity to lengthen out the schedules, in order to efficiently operate the road. In running trains between Council Bluffs and Ogden at an average speed of 10 miles per hour, including stops, the running

time between stations would fluctuate from 16, 17, 18, up to 25 or 30 miles an hour, depending entirely on how much time they had been delayed at the last station in trying to recover time, or going down grade. (4272) Its maximum speed will go up to 20 or 25, and may go up to 30 miles per hour. A train operating from Council Bluffs to Ogden at a speed of 20 miles per hour, including stops, would probably in some places have a maximum speed of 40 miles per hour. There are no steep grades between Julesburg and Denver. The only substantial grade between Council Bluffs and Julesburg is the one out of Omaha.

Maximum speed of 40 miles.

There are some slight grades around Elkhorn and Waterloo. "Q. You spoke about trying to get trains in to Denver so as to make an earlier delivery. I wish you would explain that. A. There is a great deal of freight distributed upon other industry tracks in Denver, and our idea is to get the train in earlier in the evening, so that we can deliver the cars to the distributing roads and have them ready for unloading at the morning hour." Deliveries were not being made as early in the morning as he wished. In order to run a train from Council Bluffs to Ogden in 54 hours, the average speed would be 18½ miles per hour; that would make the maximum speed at times from 35 to 40 miles an hour. "I have been told by several of our train men who handled that train that it has run as high as 60." (4273) Witness omitted to state that he is authorized to construct a new general office building in the city of Omaha at a cost of $1,339,000.00, independent of the cost of the land. Tie-treating plants have also been constructed at Topeka, Kansas, and Laramie, Wyoming. There are about 20,000 employes on the payrolls of the U. P. All the roads entering Kansas City expect to use the new Union Station there.

Object of early delivery at Denver.

Speed required by 54-hour schedule.

New general office bldg—20,000 employes.

(4274) The purpose of treating ties is to make the life of the tie longer. The life of a pine tie, not treated, is about four years; treated, from eight to ten years. The treating of ties is not so much a matter of economy as of scarcity of timber. Witness pays from 80 cents to as high as $1.00, at Kansas City, for untreated ties. It costs from 10 to 12 cents more to treat them. (4275) Witness agrees with the testimony of Mr. Harriman to the effect that the improvements which have been made, and which cost millions of dollars, have reduced the percentage of the cost of operation. The average movement per mile per day of freight cars is affected by the number of large industries and terminals along the line of railroad. Witness knows that the Pennsylvania Railroad, starting at New York, passes through a large number of very large towns between New York and Pittsburgh, as well as through other large towns in Ohio and Indiana.

Cost and treatment of ties.

(4276) Terminals reduce the time. The effect of the terminals of the U. P. cannot be compared with those on the Pennsylvania road, or on the New York Central, because the business on the different roads is so different. The largest towns on the U. P. are Denver, Kansas City, and Omaha. (4277) Witness thinks that the

Good car movement on U. P.

comparison of the movement of freight equipment per car per day on the U. P. with a similar movement on the Pennsylvania, is a fair one, and that it is a good illustration of the good movement of equipment on U. P. (4278) Witness is not conversant with improvements made on the Santa Fe, except the loop which they have put in out in the Albuquerque territory. In referring to the improvements made by other railroads, witness referred to the roads in the immediate territory of the U. P. only. He had in mind the Rock Island and the Burlington principally, and the Northwestern. These roads were originally in a better condition than the U. P. (4279) "Q. That being the case, in order to bring you up to a parity, it would not be essential for them to spend as much money, would it? A. We did not intend to bring ourselves up to a parity, but to surpass them." At the time the improvements upon the U. P. began, it would be necessary, in order to bring the U. P. up to the same condition as the Burlington, for the former to spend more money than it would be necessary for the Burlington to spend. In witness' judgment the U. P. has surpassed the Burlington in the improvements made.

U. P. has surpassed other roads in improvements.

The Pennsylvania Railroad has four tracks east of Pittsburgh, and two west of Pittsburgh. The possession of this large number of tracks gives the Pennsylvania a considerable advantage over the U. P. in the movement of its traffic. (4280) Witness believes that the U. P. could manage to get along without the new office building if it had to.

Park.

(4280) WILLIAM L. PARK.

Omaha. General Supt. U. P.

Resides in Omaha: General Superintendent of U. P. Railroad. Has been connected with the U. P. since April, 1875, as brakeman, conductor on freight trains, passenger conductor, assistant superintendent, division superintendent and general superintendent.

Physical condition of U. P. from 1875 to 1898.

As to the physical condition of the U. P. from 1875, down to the time of the reorganization, in 1898: "The line was constructed on the contour of the country, pretty generally; that is, it was built around the hills instead of cutting through. It was laid close to the surface of the ground, through the depressions and over the hogbacks, as they were called, making a great many vertical curves. The depots were roughly constructed of boards nailed upright on the framing, the cracks battened, and without foundations other than posts or wooden foundations. The telegraph line consisted of two wires on small poles of irregular size. The batteries were of the gravity style, placed about 200 miles apart, at which there were also located repeating offices, to which the messages were sent and then repeated further along. The bridges were pile bents or wooden trusses placed on abutments. The stone work consisted of native stone, which very rapidly disintegrated. In the smaller openings wooden boxes were used. And some of the culverts were of the native stone. Q. Was steel used in bridges at that time? A. Very little steel. Up to the time of the reorganization there was only

Depots.

Telegraph line.

Very little steel bridging.

about 12,000 feet of steel in the bridges. There was also another form of drainage used, called the French drain; a primitive arrangement of rocks under the track, through which the water drained. It was not a bridge, but it permitted the water to pass through. It was something that was very cheaply constructed, and (4281) under certain conditions, answered its purpose, although it contained an element of danger. * * * Shops and round-houses were frame structures. Some of them were of the native stone, and some brick. The tools and appliances were crude. * * *

Crude drainage arrangements.

"The roadway water tanks consisted of a tub holding about 25,000 gallons, placed on frame bents; with a barn structure around it and a stove underneath to keep the water from freezing. The discharge pipes were very small—about 4 inches. These water stations, east of the mountains, were supplied mostly with windmills; and there were also located at the water stations, hand pumps. * * * The wind quite often failed, and it was necessary to call in the section men, and sometimes the train employees, to operate the hand pumps. There were no signals or railroad crossing protection, very little fencing. There was no ballast, except perhaps a few miles over the summit of the Rocky Mountains, or the Black Hills, rather, where the Sherman gravel that we now use on all of our lines was the natural soil under the track. The rail in the prairie territories was 45 pound iron, some 50 pound steel; in the mountain territories, 52 pound and 56 pound steel. The iron rail was connected with chairs. The steel was connected with fish plates. The chairs are now entirely obsolete, and the fish plates are found about the yards on minor tracks. * * *

Antiquated water tanks.

No signals and no railroad crossing protection.

"The coal chutes in use in 1875 and 1880 were very primitive; simply platforms at the intermediate coaling stations, from which the coal was either shoveled on to the engines by hand or carried on in boxes by the brakemen. At the district terminals the coal was shoveled from the platform by hand. A little later, after 1880, there were some coal chutes put up at the district terminals, on which cars were run up an incline by an engine and the coal was shoveled into pockets and from there dumped on to the engine by the firemen or hostlers. * * * The passing tracks were from six to twenty miles apart. They held from 15 to 25 cars. A good many of them were stub-ended; connected at one end only. * * * The ties were small and of irregular size. A good many of them were taken from along the road; native cedar and mountain pine. None of them were treated at that time; they were in their native condition."

Primitive coaling facilities.

Passing tracks.

Ties.

As to the present condition of the property: "The line has been straightened throughout from Omaha to Ogden. A great deal of the curvature has been eliminated and (4282) considerably reduced. The grades have been rectified, the sags taken out, and a great many of the hog-backs cut down. The maximum adverse grade going west, except in the Omaha yard, to the summit, is 43 feet to the mile, with the exception of 26 miles from Cheyenne to Buford, where there is a maximum grade of 82 feet. Eastbound the same ruling grade

Improvements made since reorganization.

New telegraph and telephone systems.

obtains, except between Ogden and Wahsatch, where the old grade of 96 feet to the mile still exists. * * * The telegraph line has been entirely reconstructed. It now consists of heavy poles carrying heavy copper wires; there are approximately 30,000 miles of wire on the entire line. The circuits are from 500 to 1,000 miles. Dynamos are used instead of gravity batteries. We have 350 miles of copper wire, used exclusively in handling trains, and have now under construction and nearly completed some 2,000 miles of telephone train dispatching lines. * * *

Modern machine shops.

"The machine shops have been modernized; machinery put in for the quick handling and turning of locomotives, such as traveling cranes, air hoists; and for the turning of tires; expediting the work.

New water tanks and water softeners.

The standard water tanks are of 60,000 gallons capacity, of steel, on iron columns. The standard of the discharge pipe is a 12-inch opening. The windmills have all been abandoned and the water stations equipped with gasoline engines and steam engines for pumping water. * * * In the bad water districts we have erected 36 water softeners the purpose of which was to take out the hard or encrusting substances contained in the water, which render the operation of the engines more effective and extended the life of the flues and bettering the ability to turn them at the terminals, quicker.

New pipe lines.

* * * A pipe line was constructed from Fort Steele, Wyoming, to Rawlins, Wyoming, a district terminal, about 16 miles in length. The pipe laid was ten inches part of the distance and 12 the balance of the distance, carrying the good waters of the North Platte River, which is a mountain stream, to the district terminal. This construction amounted to about $300,000. A pipe line was built from Elk, Montana, to Hanna, 16 miles, with a branch to Dana, Wyoming, supplying two water stations between Rawlins and Laramie. The pipe line at Laramie, Wyoming, was reconstructed. And pipe lines are now under construction in the vicinity of Spring Valley, between Green River and Evanston, not yet completed. There were smaller pipe lines and reservoirs built in a number of localities. * * *

Interlocking plants.

"Quite a number of interlocking plants have been constructed, mostly along the main line. Several of them are exclusively Union Pacific plants, notably the one at Borie, Wyoming, put in as a safety (4283) precaution. Trains operating on the east side of Sherman hill or trains going on to this junction, are safe-guarded against trains that might be coming down the hill at too high a rate of speed or not within the control of the engineer; in fact an accident of that character induced us to put in that particular interlocking plant. Some of these plants are electrically operated, and some of them mechanically operated. * * *The standard type of coal chute is of the conveyor type; a double-track structure in which coal can be taken from three tracks—two underneath and one at the side. The coal is dumped from the cars into a bin, and elevated to the top of the chute, where it passes through crushers which prepare it of proper size for use on the locomotive. These

Coal chutes of conveyor type.

chutes have also been equipped with sand bins or pneumatic sanders, which enable the engine to take sand at the same time it is taking coal; also with water cranes; so that second stops may be avoided in obtaining the supplies. There are other types, with a cable hoist, in which the coal is hoisted up an incline, with a gasoline engine, and the pockets and dumping arrangements, sanding arrangements, are practically the same as the conveyor type. * * *

New standard rail, 90 lbs.

"The standard rail is 90 pounds; 33 foot lengths, each rail weighing 990 pounds. The main line from Omaha to Ogden contains over 50 per cent. of the 90 pound rail and over 90 per cent. of rail weighing more than 80 pounds. * * * There is no rail in any of the main tracks lighter than 70 pounds to the yard. * * * The rail connections are what are known as continuous joints; a combination angle-bar and bridge joint supporting the bottom of the rail as well as the head. This joint is only recently in use. They weigh 86 pounds to the pair, and cost $1.77 each as compared with the old chair which weighed about 12 pounds and cost 15 cents, I think, and the fish plates that weighed 38 pounds. A tie plate weighing 6½ pounds is used on every soft-wood tie on the main line. This is a recent addition to safety; to prevent the rails from spreading laterally under the traffic. The entire line from Council Bluffs to Ogden has been ballasted, 15 or 20 miles with slag; the balance, to Creston, on the Continental Divide, with Sherman gravel—disintegrated gravel. Creston is about 725 miles from Omaha. From Creston to Ogden the Granger gravel was used. Nearly all of the sidetracks on the main line have also been ballasted. In order to do this, the embankments were strengthened over the (4284) entire distance, leaving them at the base of the gravel with an 18 foot face, and on some parts of the road a 20 foot face. * * * The old section house was constructed somewhat similar to the depots—of rough boards. They were all scrapped, and new section houses constructed. Bunkhouses were provided for the laborers, maintenance houses for the signal maintainers, and in a good many localities houses were provided for the agents. These were comfortable buildings, on stone foundations, plastered. At some of the district terminals we also have erected cottages for the train dispatchers and some of the officials. These houses have modern conveniences, bath, hot and cold water. * * *

Continuous joints and tie plates.

Entire main line and much of side tracks ballasted.

Houses provided for employes.

"An effort has been made in the last few years to park the right-of-way. Some 30 linear miles have been planted to alfalfa. At other portions great care has been exercised to keep down the weeds, to encourage the growth of blue grass—a matter that prior to that time had been neglected. A great many parks have been put in at the principal stations, notably at Omaha, Fremont, Grand Island, Kearney, Cheyenne, and particular effort has been made in that direction out in Wyoming, at Rock Springs, Green River, and Rawlins, where, previous to the advent of these parks, I understand no grass was to be seen in the towns. This was done for the benefit of our patrons and as an example of neatness to the employees.

Parking right of way.

Depot parks.

New stock yards.

The stock yards at intermediate stations were nearly all reconstructed; scales put in for the weighing of individual animals; branding chutes; dipping vats; and other conveniences for the shipper. At the larger terminals very elaborate stockyards were built, embracing modern conveniences, the principal feature of which was two tracks into the yards, which enabled stock to be unloaded from a train and a train to be loaded at the same time. A great inconvenience had existed, prior to that, in that one shipper was obliged to hold his stock in the pens longer than he might have desired. Trains coming in and unloading, perhaps under the requirements of the 28-hour law, and for that reason taking precedence, he would necessarily wait in the yard until all of that class of stock was unloaded. The second tracks enabled us to load a train out and load one in at the same time. Hotels were put up at some of them, for the accommodation of the drovers, containing baths, hot and cold water in the rooms, electric lights about the yards to expedite the unloading of sheep—principally sheep—but stock, at night. A great deal of discomfort to the shipper, and delay, had occurred in not being able to get the shipments out of the cars. Electric lights, and the use of goats to lead the sheep out, solved that problem. * * *

Load and unload stock at same time.

Hotels built for accommodation of drovers.

Trained goats.

"Trained goats were employed at the yards at Green River, Rawlins, Laramie and Cheyenne, to lead the sheep out of the cars and into the cars. * * * In the night it was a very difficult matter to get the sheep out of the cars; and we finally hit on this scheme, which I think is peculiar to the Union Pacific. A goat was taken up into the car, and was so trained that he walked around through the sheep, and as he walked out they seemed impelled to follow him."

Early train service.

Witness gives a general description of operating conditions as they existed when he first became connected with the road. (4286) In 1875 one through passenger train was run each way. There was a mixed freight and passenger, and occasionally extras carrying stock and Asiatic goods. In 1881 the line from Julesburg to Denver was completed and a train was put on between Omaha and Denver at that time making a second train on the main line between Omaha and Julesburg. That was a passenger train. In 1883 another passenger train was put on between Julesburg and Denver operating in connection with the main line train. In 1887 another through train was put on the main line which in 1889 was merged into the fast mail. The freight train movement grew in about the same proportion. In 1897 there were, both ways, about 15 freight trains and 4 passenger trains on the main line.

Improvement in train service.

Since that time passenger trains have increased about 70 per cent. and freight trains about 25 per cent. "We are now operating 24 passenger trains out of Omaha as far as Grand Island; 20 passenger trains as far as North Platte; 18 from Omaha to Julesburg and 12 between Julesburg and Granger. 8 passenger trains are being operated through to Ogden." There is only one west-bound scheduled through freight train between Council Bluffs and Ogden

at the present time. It is Number 53. It is run in sections to accommodate the traffic. There is also a train called the Packing House Special that is run three times a week. (4287) It has no number. It is run either as a section of the through California train or as an extra. There is a through train between Council Bluffs and Granger, which goes on to Portland. Its number is 55. That train is run in sections as the traffic demands.

Eastbound through freight trains.

The eastbound through freight trains at the present time are No. 54 and No. 56. These are simply the printed schedules. The regularity of eastbound trains on these schedules is not maintained. The eastbound movements are generally on train orders. There is one scheduled train from Granger to Council Bluffs, eastbound. That is the return Portland train. "Q. What is the number of the Portland train, eastbound? A. I was mistaken. There is no schedule of the eastbound Portland train." That is run as an extra. Green fruit trains are handled on schedule orders, or orders running them as extras.

(TESTIMONY RESUMED, NEW YORK,
THURSDAY, FEBRUARY 24, 1910.)

"Nellie Bly Special."

There was a very fast time freight train put on during the Summer of 1897. It was called by the train men and others the "Nellie Bly Special." (4288) That name was given it because "this newspaper correspondent, Nellie Bly, was making a flying trip around the world at that time, and the train was dubbed the 'Nellie Bly Special,' on account of its extraordinary speed. It consisted of about eighteen cars, 500 tons, and was run on passenger train time, with a passenger engine; either as a first section of the passenger train or on passenger train schedules. It was given right of way over passenger trains in the opposite direction, and over all freight trains. The inspections at the district terminals were disregarded. The caboose was frequently changed on the 'fly,' as the men call it, without stopping the train. Sometimes the engine was changed without stopping the train. And very frequently they went through the district terminals in two and a half to five minutes. Q. Explain how the engines and cabooses could be changed without stopping the train? A. Going into a district terminal they would cut off the engine and it would be run ahead; of course the train would be slowed down; and the out-going engine would assume the speed of the train, and make the coupling; the caboose would be dropped off and the other caboose would be run on with the switch engine." The time of the train through was 32 hours between Council Bluffs and Ogden. The fastest time was made from Cheyenne west, on the descending grades. At times the train ran at least 50 miles an hour.

Engine changed without stopping train.

A war measure.

The inauguration of that train witness understood, at the time, was a war measure, and rather abnormal. A war measure directed against the O. S. L.; an attempt to run the freight via Ogden and Sacramento to Portland. "I rode on it a number of times, on the

Unsafe rate of speed.

engine; and it was not a safe rate of speed for a freight train." The 32-hour schedule lasted about 60 days. Then the schedule was lengthened to about 54 hours. That was in 1900. Witness thought that there was a schedule of 53 hours intervening between the 54-hour and 32 hour schedule. The 53-hour schedule extended from the time the 32-hour schedule was abandoned, down until 1900; until the 54-hour schedule was effective. The method of handling the 53-hour and 54-hour trains was somewhat similar to the Nellie Bly Special. The inspection at district (4289) terminals was curtailed, and the train was given advantage over other freight trains of all classes, and quite frequently over passenger trains. The average rate of speed of that train between Council Bluffs and Ogden was about 18½ miles an hour including stops. It would very frequently run 40 miles an hour. If it was given the right of track over all trains witness thinks it could be put through on that time now, but it would not be practicable.

Inspection curtailed.

Service demoralized in 1900.

"In 1900, at the time of the 54-hour schedule, conditions became very much demoralized on the Wyoming division, between Cheyenne and Ogden. A great many wrecks occurred, and there was considerable congestion. I was sent to the Wyoming division in June, 1900, and found a congestion of freight at Green River, Wyoming, that was quite extensive. There was also considerable difficulty in getting the freight through the Laramie and Rawlins yards. I remained at Green River for 40 days without going to the office and without going to my home." The new work had something to do with that condition, and the running of fast trains without proper tonnage. "We were sawing this fast train through Green River, letting it go out of there with part of a train, with from 500 to 1,000 loads of other merchandise waiting to be moved in both directions. * * * A good many of the locomotives were necessarily employed in work-train service. There were a good many slow orders in effect, retarding the movement of trains and throwing them off their schedules. * * * The slow orders were necessary in order to safe-guard the trains in passing over the track that was being raised under traffic, and the connections that were made with the cut-offs, and the ballast work. * * * The ballasting and also the bridges." (4290) Referring to the want of tonnage interfering with the movement of traffic: "This westbound California time-freight 54-hour train, in particular, we were trying to put through as nearly as possible on its schedule time; and in order to overcome the delays and accomplish this, the train was permitted to leave the terminals with much less than the rating of the engine; and if we could have gotten rid of some of the other freight that was ready to go out, we could have more quickly removed the congestion." The traffic could have been moved to better advantage if the engines had been permitted to carry the tonnage which they were capable of hauling. After about 40 days at Green River straightening out the difficulties which existed at that time, witness was able to leave there; the conditions were about normal.

Cause.

Slow orders in effect, account betterment work.

Lack of tonnage.

Normal conditions obtained.

The traffic continued to increase up to the present time. As the business increased, the schedules of this 54-hour train were decreased, and the tonnage of eastbound freight trains was increased. The conditions were very satisfactory up to shortly after the earthquake in California, in April of 1906. During that fall we experienced another congestion that was caused by the backing up of the freight and holding it on our line for delivery to the S. P. As to the conditions which existed at that time, following the San Francisco fire: The relief trains that were started from Colorado and from Omaha and were run for several weeks after the earthquake, started a slight congestion, on account of engines running with light trains. The merchandise accumulated at Ogden and at Green River on account of the inability of the S. P. at Ogden to receive it; and was then set out on the passing tracks along the division. The U. P. was building a double-track between Rock Springs and Point of Rocks at that time, a new second track, which was just completed; and instead of putting it into service, some 7 or 8 miles of merchandise cars, destined to San Francisco, were set out on that track. "There were so many of them, I know, that in order to guard them I took the mounted train guards (4291) that we have employed in Wyoming to intimidate train robbers, and put them out along these merchandise cars, to patrol them, on horseback, and put out water barrels to protect against fire."

Satisfactory conditions disturbed by earthquake.

Track occupied by relief trains.

Traffic congestion.

The effects of the increased traffic growing out of the San Francisco fire lasted, upon the U. P., through the fall and winter of 1906; and the growth of the business in the meantime had steadily increased. In 1907 its through trains were not making their schedules, and there was some slight indication of another congestion—in the fall of 1907. The trains were not making their schedules on account of the density of train traffic; too many passenger trains, and too many freight trains. Everybody was doing their best to get the trains through on schedule time. "It had become a question of keeping the road clear, along in September; and on September 17, after looking the situation over on the road, I recommended to the vice-president and general manager that we lengthen out the schedules of the freight trains, in order to obtain the maximum efficiency of the locomotives, which was approved; and the schedules of the westbound time-freight trains were then lengthened to 100 hours to Ogden.

Congestion again caused, in 1907, by density of traffic.

Advised lengthening of train schedules to obtain engine efficiency.

"Q. Before you made that recommendation, please state the actual time that was being consumed by your westbound general merchandise freight trains in running between Council Bluffs and Ogden. Take it for the month of September, 1907. A. California expedited No. 1, on the 1st day of September—— MR. SEVERANCE. Is that the same as No. 53? WITNESS. Yes, sir. We numbered the trains. We called them California No. 1 and 2, etc., in order to keep a record of them—to keep track of them. Q. Was it numbered 19 at one time? A. That was the schedule number of the train—No. 19; and later the numbers were changed. We got so

Actual time of trains.

many passenger trains that we had to use the lower numbers for passenger-train service, so the freight-train numbers were shoved up into the fifties; and instead of calling it number 19 on the schedule it was then called No. 53. This No. 53, on the 1st of September, left Council Bluffs on time; went to Green River 92 hours 15 minutes late. Expedited No. 5, on the 5th, left Council Bluffs on time, and went to Green River 54 hours late. On the 15th, No. 15 left Council Bluffs on time and went to Green River 55 hours and 54 minutes late. Those were three trains taken on the 1st, 5th, and 15th of September. During the year preceding, from September 1, 1906, until August, 1907, of 20 trains, scattered from September to August, 8 left Council Bluffs on time, 12 late; an average of 47 minutes late. None of them arrived at Green River on time. 20 arrived there late, an average of 32 hours and 20 minutes late. Following the lengthening of the schedule, of 20 trains scattered through the different months from December, 1907, to Septem- (4292) ber, 1908, 13 left Council Bluffs on time, 7 late, an average of 8 minutes late. 11 of them arrived at Green River on time, 9 late; or an average late arrival at Green River of 5 hours and 54 minutes, * * * —that is the year following the extension of the westbound time schedule to 100 hours and 45 minutes."

Belated trains.

None arrived on time.

Prior to the lengthening out of the schedules in 1907 the trains were running behind their printed schedules. It was impossible to get them over the road in less than 100 hours. From September, 1906, to August, 1907, the schedule was 74 hours and 30 minutes. For a short time in 1903 it was 82 hours and 10 minutes; then it was shortened to 74 hours and 30 minutes, and from 1903 to 1906 it was scheduled at 74 hours and 30 minutes. It was scheduled at that up to the time the change was made in 1907. The cause of witness' inability to get the trains over the road on time in September, 1907, was the density of passenger traffic and freight-train traffic, and quite a good many slow orders incident to the reconstructing of the line. It devolved upon witness as the General Superintendent to move the traffic in the best possible way; to keep the road clear from congestion; and he saw from his experience on the same division in 1900 that there was no better way to do it than to increase the tonnage.

Necessary to increase tonnage.

He came to the conclusion as a practical operating man that that was the wisest course to pursue under existing condition; because "the tonnage ratings are fixed for certain speeds; and the train dispatchers are required to give the trains the tonnage which will enable them to maintain the schedules. They have very little discretion as to that. If the schedules were lengthened and the tonnage rating increased, it would be authority to the train dispatchers to increase the train load. If an engine was rated at 15 or 18 miles (4293) an hour, at 1,500 tons, and could haul 2,000 tons at 10 miles an hour, it would permit the dispatcher to get rid of 500 tons more on each train; and that, of course, would reduce the number of trains on the road."

Tonnage ratings.

Increase of tonnage rating.

As a matter of fact the engines had a certain amount of power which was being reserved for speed, which the locomotives could not possibly make on account of opposing trains. Witness proposed utilizing that extra power by adding tonnage to the trains, and that is what he actually did. It was impossible to increase the speed of the trains and thereby remove the difficulty because to increase the speed it would have been necessary to reduce the tonnage and that would either have caused a greater congestion or created more trains, which would have made the situation worse. It would have created more trains because each individual engine would be handling less tonnage, and that would make more trains necessary to haul the traffic. Witness was about up to the limit of his ability to handle trains on that track under existing conditions.

Power reserved for speed was being wasted.

Increased speed would make more trains.

The result following the changed methods which were adopted was that the congestions were cleared; all of the freight was moved; and some economies were effected in taking off switch engines and extra employees that were necessary when congestion existed, in order to do the extra work; and over time was cut down. A year following the lengthening out of the schedule, "of 20 trains taken at random, from December, 1907, to September, 1908, 13 left Council Bluffs on time, 7 late; an average at Council Bluffs of 8 minutes late. They arrived at Green River, 11 of them on time, 9 late; or an average of 5 hours and 54 minutes late. In 1906 the 20 trains referred to previously averaged 106 hours and 50 minutes; and the 20 in the year following the extension of the schedules averaged 106 hours and 40 minutes—practically the same time consumed on the two schedules."

Increased tonnage relieved congestion.

Actual time practically the same.

The recommendation made by witness on September 17th (4294) as to the extension of the schedules were approved by Mr. Mohler, and the extension was made. In the opinion of witness the most efficient rate of speed upon which to operate freight trains between Council Bluffs and Ogden to get the general merchandise traffic over the road in the best possible time, taking the traffic as a whole, would be between 10 and 12 miles an hour. That would make the trains run between stations probably 15 to 20 miles an hour.

10 to 12 miles per hour most efficient speed for merchandise trains.

As to the difficulties which surround the operation of a single-track road, when there are a great many trains to be operated over it: "Under the rules prescribed for the safety and operation of trains, they have certain direction rights and rights by class. Trains inferior to others under the rules and as designated on the time-cards, are required to clear the superior trains a certain prescribed number of minutes; to be off the main track and clear, with the switches locked. As between trains of the same class, the direction rights on the Union Pacific would require eastbound trains to take the sidings and clear the time of westbound trains. That would apply to freight trains of the same class; the eastbound trains being inferior, by direction rights would be required to take the side track for westbound trains. Trains are handled largely by train orders put out by dispatchers. The dispatcher has authority to supersede the time-table

Difficulties of operation on single track road.

rights of trains; and he does that by issuing train orders; which might give a train of an inferior class the right over a train of superior class either by direction or class rights. As the density of train traffic increase on a single track road, the contingencies increase; the liability of trains to break in two; engine failures; hot boxes; and the automatic block signals under some conditions, result in the delay of trains. In order to make them efficient it is absolutely necessary that the requirements be observed literally. At times these signals will fail and give a stop indication, through some mechanical defect. Although the engineer might see the track clear for five or ten miles ahead, the rules would require him to stop and wait a certain length of time before proceeding, and, under certain conditions, to send a flagman ahead until he could see the next block."

Principal difficulty in making time is the meeting points.

(4295) When the traffic is heavy the principal difficulty in making time is the meeting points—the meeting and passing of trains. During 1907, at the time the 74-hour and 30-minute and the 100-hour and 45-minute schedules were in vogue, there was an average, between Cheyenne and Rawlins of 20.23 freight trains, and 10.37 passenger trains. On the Wyoming division, Rawlins to Green River, there was an average of 21.29 freight trains and 10.22 passenger trains. At the time referred to by these figures the Wyoming Division extended from North Platte to Green River. The total for the Wyoming Division was 17.87 freight trains and 10.65 passenger trains. In 1900 there was an average of 901 gross tons and in 1909 1,538 between Council Bluffs and Ogden. It would have required 70 per cent. more trains or 8.86 more freight trains; a total of 21.52 freight trains in 24 hours or a total of 33.8 freight and passenger trains if the business of 1909 had been handled with the same number of average tons per train as were hauled in 1900. The additional trains would have caused more delays at the meeting points, and the contingency which witness has detailed as being the cause of delays to trains.

Additional trains required with same tonnage as in 1900.

Train priority.

(4296) The more passenger trains on the road the more delays to freight trains—for the reason that they have superiority both by class and direction. Stock trains eastbound were given priority over westbound time freight trains. The fast mail train is given rights over all passenger trains. Passenger trains are required to clear the time of the fast mail train five minutes. The dispatchers use their judgement as to the handling of the fruit trains. If they were not making their schedules, the dispatchers might give them right of track over the district, as against all westbound freight trains. He might possibly give it the right over unimportant local passenger trains.

Primitive conditions occasioned many train wrecks.

"In 1900 accidents were very numerous, particularly in the mountain territory. There were a good many passenger train wrecks and a good many freight train wrecks. Block signals and interlocking plants were installed. Better education of the train and engine men was inaugurated—constantly schooling them on the train rules and on the use of the air brake, and more attention was given to physical

examinations of the men; all of which are accomplished by keeping on the road the greater part of the year a school of instruction, consisting of three cars, one fitted up (4297) for the examination of train and engine men and other employees who have to do with the operation of trains; another to instruct the engine men and train men in the proper and efficient use of the air; and the other car run bi-annually, in charge of a surgeon who examines new employees and re-examines the old employees as to their physical qualifications. This and other methods of operation have tended to reduce accidents on the Union Pacific since 1900 very materially. From 1902 to 1907 inclusive, the accidents to passengers and employees, as indicated by the reports made by the Union Pacific Railroad to the Interstate Commerce Commission, were, in 1902, number killed to employed, one in 627 employees; in 1903, one in 495; 1904, one in 552; 1905, one in 715; 1906, one in 380; 1907, one in 418. The number of train accidents per million locomotive miles has decreased from 20 to 10 in about the same period."

School of instruction maintained.

Number of accidents greatly reduced.

Witness describes more in detail the betterments made on the U. P. subsequent to the receivership. (4298) The same. (4299) Witness thinks the betterments have been made in a very substantial manner. "The foundation has been laid for a first-class railroad; the work is not by any means completed; the bridges have been standardized, and the roadway signs have all been standardized. Buildings, depots, the standards of ballast, the standards of rail, the standards of fencing have all been arranged on the most substantial basis; and if the work continues as it should on that foundation, from my personal observation, the road will be as good as any in this country." The work has been done in a first-class manner in every particular. As compared with the betterments which have been made on other western lines witness thinks they have been, as far as track is concerned, of a higher standard and that the signals and interlocking plants have been of a higher standard than those of other lines west of the Missouri River.

Character of betterments.

(4300) Witness would not say that the shops and roundhouses were any better than some of the other transcontinental lines. "We have modern shops at Omaha, perhaps as good as any railroad machine shops in the country. Outside of that our shops and roundhouse facilities, while they would compare favorably with other lines, I think are no better." As to the roads west of the Missouri River in U. P. territory witness thinks the physical conditions of the U. P. are better than any other road. In the operation of trains upon the U. P. efficiency has not been subordinated to economy. In 1906 there were 94.65, and in 1907 there were 214.52 miles of double track in operation between Council Bluffs and Ogden. The additional double track put in operation in 1907 was ready for use probably in the Fall of that year. The work was generally completed at that time. The U. P. in 1875 as described by witness was the old-time railroad. There are no railroads in the country now so far as witness knows that are in the condition the U. P. was in

Physical condition of U. P. better than other western lines.

U. P. poorly constructed originally.

then. Witness thinks perhaps the U. P. was not quite as well built as some of the other roads that were built at the same time because it was to some extent a war measure and the construction work was pushed very rapidly. (4301) From 1875 the condition of the road was gradually improved up to the time of the reorganization. Up to 1888 the improvement was rather slow. From 1885 up to the time of the receivership there was considerable more activity than in the preceding ten years. Under the Charles Francis Adams' administration considerably heavier rail was laid, some depots were built, one at Cheyenne costing $100,000, and some stone depots at Valley and Columbus. Some of the yards were enlarged, especially the one at Denver, and shops were built.

Improvements up to receivership.

Witness thinks that less than $4,000,000 was spent in additions and betterments between 1885 and the receivership. Nothing charged to betterments during the receivership. The line was bettered a little--not very much. Business was poor, (4302) and earnings were poor. No money was spent that could be avoided. The property was kept in shape the best it could be, and after the reorganization the work of putting it up in fine condition was undertaken. It seemed to have been planned by the men who bought it and they brought on the scene those who were very capable of carrying the work out and understood what was to be done, and it proceeded from that time until the present time very substantially and rapidly.

Very few betterments during receivership.

Immediately after the panic there was some cessation in the work but it has been practically in progress all the time. The lengthening out of the train schedules was co-incident with the panic, "and I well knew that it would result in economies, and it did result in economies. We increased the trainload, and when you increase the trainload, certainly you decrease your expenses. But the prime cause of increasing the load at that time, came about from conditions that had existed some time prior—a threatened and existing congestion, and the recommendation for this particular lengthening of schedules came to me from the train dispatchers, and the train masters, and the assistant superintendents, and superintendents, who were wrestling with the operation of trains, and I conveyed that to the vice-president-general manager as my recommendation for a better and more efficient operation of the road, and to avoid the possibility of another congestion as had existed twice prior to that in my experience on the Wyoming division. But I will admit that it resulted in economies that were very much appreciated, and that we were glad to have at that time, and we were also obtaining economies from other sources."

Lengthening schedules brought economies, but was an operating necessity.

Recommended by those dealing with train movement.

(4303) At the time of the panic there was a heavy reduction of force in the shops at Omaha and in other shops. The new work was quite generally stopped. It was approaching the Winter season and the work would discontinue naturally in a short time. The new work was gradually resumed during the ensuing year, 1908. The new work at that time consisted principally of double tracking. In

Shop forces reduced during panic.

1907 there were 214 miles of double track and in 1908 there were 297 miles. The year referred to by the witness was the fiscal year which ends June 30th. "Q. * * * Now isn't it a fact that that double tracking was all done in the Summer of 1907 before the panic—that additional double tracking that brought it from 214 miles to 297 miles? A. No. Some of the ballasting and completion was done in the Spring. Q. Did you lay any rail in the Spring? A. Yes, sir. We operated the steam shovels. There never has been a season that we did not work our gravel pits. Q. You did not do very much that Spring? A. We did not go at it as heavily as we did in some of the previous years."

Property kept up.

At the time of the panic all men that were not absolutely necessary in the general offices were dispensed with. The Company put in effect all of the economies they knew of, but still maintained the property in a good physical condition. It was not allowed to run down. (4304) Borie where one of the new interlocking plants was put in, is the new junction of the line from Denver with the main line west of Cheyenne. The interlocking plant was put in absolutely as a safety precaution. The grade and other conditions at that point make the interlocking plant necessary. The Denver line ends on the main line in two legs of a wye, one at Borie and one at Corlett. The junction at Corlett is not protected in that way and there is only an ordinary switch there.

Interlocking plants for safety.

The difference in the two places is that Corlett is near Cheyenne and on level track and the dangerous conditions do not exist there. "Q. Outside of this interlocking plant, are there any others along the line that were installed solely for the use of the Union Pacific where you do not cross a foreign line? A. Yes, sir, at Lane Junction, the junction of the new line (new cut-off) and the old line, we established a modern, up-to-date, electric interlocking plant with 23 levers to let the trains from our old main line on to the double track." The road there is used exclusively by the U. P. (4305) In addition to the two interlocking plants just referred to, which were installed for the use of the U. P. exclusively, there is a mechancal interlocking plant at Watson's Ranch, at the end of the double track, and one at Archer, Wyoming. The one at Archer is at the end of the single track. There are ten miles of double track east of Cheyenne and an interlocking plant at the end of that by which trains are permitted to pass from the single track to the double track, or in the other direction only under the authority and direction of an operator stationed there—out of the hands of the trainmen.

Exclusive interlocking plants.

"Accidents have occurred where trains standing at the end of the double track were struck by trains coming in—somebody leaving the switch open. That is impossible of occurrence under these conditions. We have at Buford, the end of the double track between Cheyenne and Buford, an interlocking plant similar to that at Archer, and from Buford to Hermosa Junction an electric train staff installation; also in that territory the automatic electric signal

Protection against accidents.

Electric train staff and automatic electric signals.

installation, which, I understand, was peculiar to the Union Pacific until quite recently. I understand the Lehigh Valley have adopted a similar installation on one of their single-track gauntlets. The building of the double track from Hermosa to Laramie, 16 miles, and from Buford to Cheyenne, 26 miles, leaves a gauntlet of 11 miles between the ends of the double track on top of the Rocky Mountains, and at Buford there is located an electric staff machine, two machines at the next station, Sherman, and two others at the next station, Dale Creek, and one machine at Hermosa, the other side of the Sherman tunnel. A train can go from Cheyenne to Laramie without train orders, over this single track, and that is the object of the installation, and it is the only safe way that trains can be operated over a single track without train orders.

Safety afforded by staff.

"When the train arrives at Buford the operator gives them a staff, an instrument taken from the machine, and which cannot be taken from the machine unless it has synchronized with the machine at Sherman. In other words, the operator could not get this staff out of the machine unless the staff at Sherman was in the machine there. And no train crew is permitted to occupy the main track between these two machines unless they have in their possession the staff, except following each other; it has the permissive feature, and in that it is peculiar, and for that reason the automatic signals were established to protect the trains in the rear, so that one, two, three or four trains can go into a block following each other, but never two trains in the opposite direction unless the rules are (4306) violated by the trainmen. It is impossible for the man in charge of the machines to give two trains a staff at the same time, and the switches are electrically locked and connected with the machine, so that a trainman is practically locked in on the sidetrack; he cannot get out unless he has a staff authorizing him to go."

Some of the interlocking switches have been installed as a temporary measure and will be taken out when the double track is completed. The one at Lane and the one at Borie will remain permanently. There are interlocking plants at Council Bluffs, and at the east end of the Omaha bridge, and at Gilmore, but those are all used jointly by the tenant lines. The Company has seven electric interlocking plants and seventeen of the mechanical plants. Those are ordinarily put in at places where foreign lines cross the U. P. and the expense is joint.

Seven electric interlocking and 17 mechanical plants.

Advent of air brake.

Air brakes were invented shortly after 1875. Witness remembers being employed as a brakeman on passenger trains and using the hand brake. He remembers as a passenger conductor having the first air brake train in 1881. "I remember, coming east with Mr. S. H. H. Clark, the president; we started out of Laramie and the brake failed, we did not understand it, and we ran by Fort Saunders, and Mr. Clark said, 'We will just cut out the air-brake and go back to the old hand-brake—I think that is safer.'"

Economic effect of tonnage.

(4307) By increasing the train load you can decrease your expenses quicker and more effectively than in almost any other

way. "Q. This would be true, wouldn't it. That increasing the train load from 901 tons to 1,538 tons the percentage of increase in expense would be less than the percentage of increase in tonnage? A. I think so." The freight train movement to Denver was shortened from 58 hours to 48 hours in January, 1910. In 1900 witness thinks the time between Omaha and Denver was 48 hours; and the distance was shortened only by the construction of the Lane cut-off —a decrease of about nine miles. The main line to Ogden has been shortened 40 miles including the Lane cut-off.

Faster freight service to Denver.

(4308) The time on the main line remains the same as it was in the Fall of 1907. The competitor of the U. P. into Ogden is the D. & R. G. Witness has recently been over that line. "Q. Is that line in condition to make fast time? A. So far as its density of traffic is concerned I should say that trains are not very greatly interfered with. The physical conditions are such that it would appear to me not to be safe to make fast time with freight trains on a good many portions of it." The U. P. did not make the schedule of 100 hours and 45 minutes in April and May, 1909. It was running, witness thought, 6, 8, or 10 hours late. The trains varied. The winds and weather conditions affect some of them more than others. He has not made an estimate of the average time late. The U. P. is making the schedule now with fair regularity. The car service agent's office selected these 20 days that witness testified about. "Q. They picked out the days, did they? A. I don't understand that they were picked out. We took the 1st of September, and the 5th of September and the 15th of September (4309) which would be a fair indication of how the trains were moving then. I don't know whether the other trains were taken on any particular day each month. * * *

D. & R. G. not in physical condition for fast time.

Dates selected at random.

"Q. You selected the 1st, the 5th, and the 15th of September. The time taken by those trains would be no proof whatever as to the time of the trains on the 2nd, 6th and 16th of September, would it? A. No; just simply an indication. * * * That is all I offer it as." Now, about these other days. All the trains in those 20 days between September, 1906, and August, 1907, were late. He doesn't think any of them were running on time at that time. He knows about that only in a general way. He knew they were running late, and it was his opinion that none of them arrived on time. "Q. Do you know whether the 20 trains taken represented a fair average of the time that they were late, or do you simply know that 20 trains showed the result you have given, and you offer those as illustrative? A. That is all I know—that they were selected at random. * * *

No trains on time.

(4310) "The density of the traffic in 1907 between Council Bluffs and Ogden was 17.34 freight and 11.71 passenger; in 1909, 12.66 freight and 12.28 passenger. In 1907 the total of the two was 29.04, and this year 25.94. The density is a little lessened.* * * We have shortened the time on the Portland train and on the Denver train;" but not on the Ogden train. On transcontinental

Main line density.

Shortened time on Portland and Denver trains.

traffic to Portland the U. P. meets the competition of the N. P. and the G. N. On traffic to Denver it meets the competition of the Rock Island and the Burlington, the Santa Fe, and the Missouri Pacific.

Time of Overland Limited.

The time of the Overland Limited November 6, 1900, between Omaha and Ogden was 31 hours and 15 minutes. (4311) Witness has a memorandum showing that in December, 1900, it left Omaha at 8:20 a. m. and arrived in Ogden at 2 p. m. the next day. Witness gives the time for the train for each year, as follows: "November 6, 1900, 31 hours and 15 minutes; June 2, 1901, 31 hours and 25 minutes; December 31, 1902, 30 hours and 35 minutes; October 25, 1903, 30 hours and 30 minutes; November 24, 1907, 33 hours flat; November 20, 1908, 33 hours; November 7, 1909, 33 hours and 30 minutes, and February 20, 1910, 30 hours and 15 minutes."

Reasons for slower time.

(4313) Witness gives the following reasons for the slower time of the Overland Limited under improved conditions of track. "Since 1900, the time the reconstruction work was commenced, up

Time consumed by slow orders.

to the present time, we have had slow orders from Omaha to Ogden, from one to six hours, thus delaying a train of this class from 1 to 6 hours. Last fall I made a personal check of the slow

Reasons for slow orders.

orders on the fast mail and it aggregated over 3 hours. These slow orders are absolutely necessary; they are in connection with steel bridges that are going in, ballasting work that is being done, and other work of that character, which makes it absolutely necessary to lose this time, to be safe. It varies with the conditions. As I say, last fall in December, I made a check; took all of the slow orders that were out on the different divisions and applied it to No. 9, and it aggregated a little over the 3 hours that would have to be overcome by that engine in order to make its running time from Omaha to Ogden."

Average speed including stops.

The average speed, including stops, of the Overland Limited in 1900 was 31.6 miles per hour; in 1901, 30.9; in 1904, 29; in 1905, 29.1; in 1906, 31.2; in 1908, 30.3. Witness presumes the S. P. has been doing similar work and would naturally have slow orders of their own. The 3 hours on the U. P. could not be applied on the train through to San Francisco; it could only be applied to the U. P.

Helper engine eliminated.

proper. "Q. Has the fact that you have had less grades and less curvature enabled your trains to run faster? Is that any advantage? A. I hardly think so. Before the grades were reduced helper engines were used. I might give an illustration of that. From Laramie to Red Buttes, on the old line, it was practically level. A train would run there very fast, and then would obtain a helper engine, which would make the speed quite uniform to the top of the hill. Now that grade on the new line has been made uniform from Laramie to the top of the hill, 43 feet to the mile, and no helper engine is used. So that with one engine the train probably would not go between Laramie and Sherman as quick as formerly when using the helper engine, but the economy was there in dispensing

with the helper and the elimination of the risk that goes with a double header."

Lucin Cut-off.

(4314) Witness is familiar with the new Lucin cut-off across Salt Lake. The construction of that cut-off shortened the distance 43 miles. Trains are frequently delayed on the trestle across Salt Lake, because of conditions prevailing there. Witness believes that the S. P. can make better time ordinarily by using the Lucin cut-off than by going over Promontory mountain. The cut-off was built not only to save time, but in order to haul more tons of freight. The Portland freight train of the U. P. was shortened from 90 to 74 hours. That is the time on the U. P. between Omaha and Green River.

East bound freight trains.

(4315) The eastbound freight trains come so irregularly and are of such varying importance that they are run as extras. There are no regular eastbound through scheduled freight trains on the U. P. The eastbound fruit trains make about 12½ miles an hour—quite uniformly.

Knows of no agreement with fruit shippers.

Witness knows of no agreement with the fruit shippers. "I think we have said to the fruit shippers that that would be our time; that that was the time we were capable of making, and I have understood that they wanted faster time, and made some effort to get it. I have been approached by the traffic people to run the train a little faster, but felt that we were doing the best we could on the 80 hour proposition, and that it would be foolish to attempt a faster schedule when we were not able entirely to maintain the one that was in operation." (4316) The Nellie Bly train was put on as a war measure on account of some controversy as to the closing of the Ogden and Granger gateways as against the Union Pacific and an alliance was made by which the train was moved via Sacramento. At that time the Denver & Rio Grande was operating closely with the Short Line. (4317) When the trouble ended the time of the train was lengthened to 53 hours and 30 minutes. In 1900 the schedule was 54 hours and 30 minutes. At the time the 54 hour schedule was in force the train was run in sections as the traffic demanded. The congestion following the San Francisco fire lasted pretty well into the Winter of 1906.

Nellie Bly train.

Rules governing train operation.

Odd numbered trains on the Union Pacific have the right-of-way over the even numbers. The odd numbers run west and the even numbers run east. Trains of the same class, if eastbound, would take the side track for a westbound train. In the absence of specific orders given by the dispatcher a fruit train would take the side-track for a westbound train, but if he should issue an order that "engine 1620 will run extra from Green River to Rawlins on the following schedule with rights over second class trains" that would require the westbound train to clear the time of the fruit train at the stations specified on the order. (4318) In other words it would reverse the rights of the train and give the fruit train rights over all schedule freight trains running west. The dispatcher handles them at his own discretion, as circumstances may dictate in order to facilitate the movement of traffic. Ordinarily, however, the time

card rules apply, and the fruit train would take the side track for a westbound train.

Fast mail.

The fast mail has priority over all other trains. Taking out the delays that are incident to that train it makes the fastest time of any. There are heavy mail transfers at Council Bluffs, before the train starts out. It generally allows 30 minutes to an hour in making transfers. It is the heaviest mail train in the United States. At the terminals after the mail has been worked by the clerks in charge, it is necessary to take it back into the storage cars, and take up from the storage cars mail for other states to be worked by the clerks, so that at all district terminals there is a delay to that train that does not occur to the ordinary passenger trains. That train carries no passengers. It runs clear through to San Francisco (4319) and to Portland. No. 9 the fast mail runs in two sections and is scheduled faster than the Overland No. 1. The schedules of the fast mail were as follows: 29 hours and 30 minutes, 30 hours and 40 minutes, 28 hours and 25 minutes from 1903 to 1908 and 26 hours and 47 minutes on the last schedule February 20, 1910. The time of the Los Angeles Limited between Omaha and Ogden was a little faster than the time of the Overland Limited.

Heaviest mail train in U. S.

Time made by fast trains.

The Los Angeles Limited on November 24, 1907, when it was running, was scheduled at 30 hours and 40 minutes as against 33 hours on No. 1. (4320) The fast mail leaves Council Bluffs at 9:10 a. m. and arrives at Ogden at 11:17 a. m. the next day. The train travels at a speed of 37 miles an hour. With very few exceptions freight trains take the side track for all passenger trains. Occasionally a local passenger train will go on a side track for an important eastbound stock or fruit train. Witness had no personal knowledge except the talk that he heard as to the actual causes which led to the putting on of the "Nelly Bly" 32 hour train. (4321) The trouble grew out of the opening of the gateways to the D. & R. G. and the O. S. L. and closing them as against the U. P. Witness is familiar with those circumstances only in a general way. "Q. Wasn't there trouble over divisions as between the two lines? A. I understand that was the prime cause of the trouble." But as to what the exact details were he was not informed.

Factors in fixing schedule of Overland Limited.

A number of things from an operative point of view would control the schedule of the Overland Limited; the density of traffic; the condition of the roadbed under construction, as to the ability of the train to maintain its schedules. All would be factors in fixing the rate of speed from an operating standpoint. The passenger trains in 1900 numbered 7.31; in 1907, 11.70; in 1909, 12.28. The weight of the Overland Limited was greater in 1909 than in 1900. The date of the last time card of the Fast Mail is February 20, 1910. The Overland Limited is the U. P.'s preferred passenger train. (4322) "Q. That is what I mean. You do not contend, do you, for a moment, that if you had desired to do it you would have been unable to run the Overland right along through these years, as fast as it was run in 1900? A. I would not say that, for

the reason that construction work on the Union Pacific has been very heavy. We have had important bridges, which required a speed of four miles an hour, and the laying of rail, raising of grades under traffic, installation of automatic electric signals, and a great many things that cause slow orders. As I say, they would fluctuate from one to six hours between Omaha and Ogden. That period is pretty well passing away. We have got a double track and are constructing the bridges for the second track, and it necessarily makes slow orders on the present operated line. That class of work is getting pretty well out of the way. The large bridges have been completed, and with the advent of the second track, as it comes in now, I see that the service is bound to improve, unless the traffic grows to such an extent in density that it would present obstacles which we could not surmount. I do not think that will be true. I think with the second track through, we ought to operate better than we ever did, and we will begin to reap the benefit of all that has been done."

Speed retarded by construction work.

Second track will facilitate operation.

The U. P.'s fastest running time is very slow as compared with that of the eastern roads; "but I think that our engines exert themselves nearly as much in making the time or trying to make it as on the eastern lines with their completed double track and better facilities. And they are not necessarily confined to the second track. Facilities for taking care of your engines and taking care of your men, and all, have a great deal to do with the efficient operation of a railroad." Witness knows that the Pennsylvania has to put a helper on its train over the mountains from Altoona. The engine that is used on the Overland is much heavier and stronger than the one used in 1900.

Lincoln.

(4323) WILLIAM DAVID LINCOLN.

Omaha. Car Service Agent, U. P.

Resides in Omaha. Is Car Service Agent of U. P. Witness has charge of transportation, which includes the handling of the trains, the movement of cars, and the making up of schedules. He has been connected with that department since 1889.

Operating conditions in 1907.

"The San Francisco earthquake and fire had a great deal to do with the condition or the congestion on the Union Pacific Railroad in the fall of 1906 and up to 1907. As we all know, the earthquake and fire was about April 18th or 19th. The day after the fire we were called upon, about 11 o'clock, to furnish six cars to load with government stores and camp equipment, to go from Omaha to San Francisco. Those cars were furnished, and the train left there as the first section of our No. 3 passenger train, about 4:30 p. m., and went through to Ogden as the first section of that train, and, if I remember correctly (which I think I do), the train arrived at Ogden on time. (I will state that the cars furnished were baggage-cars.) After this train was forwarded, a large number of other trains went forward, loaded with relief goods, such as food and clothing. The cars which were loaded with this commodity were made up in solid trains and went forward to Ogden on the best possible time. They

Effect of San Francisco fire.

Relief trains.

were given preference over all freight trains, and some east-bound passenger trains were placed on the side-track for them. Some of them were given positive meeting-points with these relief trains.

Jobbers' supplies and building material.

After the situation or the distress in California had been relieved, then began the movement of jobbers' supplies to re-stock their stores, and of building material to re-build the cities. This material and supplies moved very heavily during the fall of 1906 and the winter of 1906. On account of the terminals of the Southern Pacific at San Francisco, and Oakland, being partially destroyed,

Cars used for storage.

the cars began to accumulate at those terminals; it was also on account of the jobbers not having (4324) storage-room for the freight as it arrived, and they used the cars for storage purposes. As the cars began to accumulate and congest in the San Francisco and Oakland yards, they would be set out at Sacramento and backed up. The cars reached us at Ogden or Green River at that time. The line between Green River and Ogden being operated from Salt Lake, we began setting out cars at Green River, then Rock Springs. Then we took our double track out of service. It had just been completed

U. P. tracks filled.

between Point of Rocks and Rock Springs. We filled that up with cars; we filled up quite a number of our passing-tracks, and the largest of our terminals were congested. This backed up to Council Bluffs. Along about April or May, the following spring, we practically cleaned up the cars which we had on the line, but the Southern Pacific were not in a position to accept regularly from us the cars we offered to them. There would be times when we would set a train or possibly two trains out east of Ogden. Then there was a very heavy movement of other freight, both west-bound (on account of the country on the North Pacific Coast and California being settled up) and eastbound, stock and fruit, which made a very heavy movement of traffic in September and October, 1907."

On account of this heavy congestion in the fall of 1907, trains, more especially freight trains, were not being operated on schedule.

Trains running from 10 to 24 hours late.

They were running on an average of from ten to twenty and twenty-four hours late, and some later. That would represent an average along about 90 to 100 hours and more of time between Council Bluffs and Ogden. This condition was very general on practically all of the westbound trains from the early fall of 1906 up until 1907. The cause of the trains running behind time to such an extent was the density of traffic. Through Wyoming the most difficult track to operate was between Cheyenne and Evanston. (4325) In October, 1907, there were between Cheyenne and Laramie 21 freight trains per day; between Laramie and Rawlins 23; between Rawlins and Green River 32; and between Green River and Evans-

Train density.

ton 30. In addition to that there were 11 passenger trains per day on each district between Cheyenne and Green River, and 13 between Green River and Evanston, which is about the capacity of those lines. In September, 1907, between Rawlins and Green River there were 33 freight trains in both directions. There were about 11 passenger trains. During the same month (September, 1907,)

there were 19 freight trains between Cheyenne and Laramie, and 29 between Laramie and Rawlins. There were about 11 or 12 passenger trains a day.

"The district terminals were congested. We were trying to move our time freight trains on their schedule, which at that time was 74 hours; not with the tonnage the engines were capable of handling. The engines which were handling dead freight were being loaded to their capacity, and were making an average of 10 miles per hour over the different districts. As the time freight trains were doing practically very little better, to relieve the congestion and to move the freight which was accumulating on us every day, we increased the tonnage on the time freight trains, and cleaned up our congestion. We got our time freight trains, and all other trains moving practically on schedule; and we have had no congestion since, except around Rock Springs and Green River in the past 45 days, which was on account of very severe weather conditions. Q. When confronted with the conditions which existed in the fall of 1907, why did you not relieve the situation by running your trains faster? A. Running the trains faster would have meant that we would have had to reduce the tonnage, which would have been less cars hauled per train, and would have meant more trains on the road, and (4326) more meeting points; and we came to the conclusion from the facts that the less trains we had on the road and the less meeting points, the more tonnage we could move in a given time." The principal difficulty he experienced in operating trains at times of heavy traffic was the large number of meeting points, which would naturally delay trains, and it was impossible to get them over the road. "When there is a heavy density of traffic moving over a district, it is quite often that there will be two, and many times three, freight trains on the passing tracks or at the station where they are to pass; and, as the passing tracks are not long enough to hold all three trains, they will naturally have to 'saw by each other,' as we say, and it will delay all three trains in getting by. If they have to meet passenger trains they have got to clear the time of the passenger train 10 minutes; that is, they have to go in on the sidetrack and have the switches locked 10 minutes before the passenger train is due. It will take them 5 minutes to go in on the passing track, and it will take them 5 minutes to get out. So they lose practically 20 minutes in meeting a passenger train, if the passenger train is on time. That would be only one train. If there are three freight trains there, and not enough sidetrack or passing track for all three trains, then the freight trains and also the passenger train will be delayed in getting by. Q. What were the results following the methods adopted by you in 1907 for the purpose of removing the difficulties of operation which then existed? A. When we increased the tonnage of our trains, we began to gain on the cars at the different district terminals, that were being held back, and we began to move all our freight on regular schedule. The terminals were soon cleared up, and all the freight was moved regularly. I can recall

Method adopted for relief.

Increased tonnage and cleaned up congestion.

Faster trains would mean more trains.

Difficulties attending meeting points.

Trains moving on time.

that after we had everything cleaned up, our freight trains were moving practically on time, and the traffic department congratulated us on the fact that we were moving our freight on schedule."

No. 53 could not make schedule time.

The reasons for the lengthening out of the 54-hour train, No. 19 originally and No. 53 afterwards, prior to the time it was lengthened out in 1907, were as follows: "In 1901, No. 19, I believe, was 54 hours and 30 minutes from Council Bluffs to Ogden. This schedule was not maintained regularly; I was watching the train myself, to see if it was not possible to make the schedule. We were continually after the superintend- (4327) ent to give it preferred attention. They would get the train on time a day or two, and then it would go off and get worse, until it was 8, 10 or 12 hours late. So as to make regular service with the train, we lengthened it out to 74 hours." The density of traffic was one of the principal causes of the train's failure to make its schedule time; another was the increased number of passenger trains; the increased movement of fruit and stock. "We made every effort possible to handle the trains over the line on schedule." In the judgment of witness, the most efficient speed, on the average, for running general merchandise trains between Council Bluffs and Ogden, under existing circumstances, is 11 miles per hour, from one district terminal to another, including stops. The proper speed, taking the distance from Council Bluffs to Ogden is 100 hours. "We have found by experience that that is the best speed that we can handle trains between Council Bluffs and Ogden and move all the freight regularly." Witness examined the records to refresh his memory as to the time made by train No. 53, or 19 as it was then numbered, in the years 1901, 1902 and 1903. The records that Mr. Mohler testified to were made up under the supervision of witness in his office. The data was obtained from the Chief Dispatcher's train sheets.

Most efficient speed, 11 miles per hour.

How records showing actual time of trains were made up.

They were made up as follows: "We gave these trains a special number, so we could locate them; so that the dispatchers from one district to another could advise the dispatcher ahead when the California time freight was due and what it was, and they could keep track of it; in other words, the dispatcher at Omaha, when the train left Council Bluffs, would number it, say 'California Special,' or 'California Expedited No. 1,' and he would report to the dispatcher at Grand Island that engine so and so, on California Expedited No. 1, would reach Grand Island at such a time, and he would show on his train sheet that number. The dispatcher at Grand Island would put the same information on his train sheet and the one at North Platte, and so on through. Some times the dispatchers failed to put that information down on the train-sheets. In telling the clerk in the (4328) office to get up the information for me, I told him to take the 2nd, 10th and 20th of June and October, California trains, but if he could not locate that train through to Ogden (some dispatcher may have dropped the number on his sheet so that he could not locate it through) to take the next one that he could run through. That is the reason that they are not all

on one day for the three or four years." At the time witness selected the days and gave instructions to his clerk, he did not know what the showing would be. He had not looked it up in advance. Witness told his clerk to take three days in June and three days in October. "He wanted to know what three days to take, and I said 'Take the 2nd, 10th and 20th.'" And the results of the investigation are as Mr. Mohler testified upon the stand here.

Dates taken at random.

In witness' judgment those examples are typical of the actual movement of that train at that time. Those train-sheets are practically in his charge. "They are in the dispatchers' offices, but I can have them at any time that I ask for them." They are where he can afford counsel for the Government or any representative they may select, an opportunity to examine them. "I can have them sent to my office so they will be convenient for any one who wishes to examine them. * * * I will be glad to give them any information they would desire to have at the time they examine the sheets." He will do the same as to the train-sheets covering the time made by trains in the summer and fall of 1907; or any other time between 1900 and the present time, with the exception that the sheets for 1900, between Green River and Ogden, have been misplaced and he cannot now locate them. He could not find them when he made up this report. With regard to his testimony about the S. P. terminals at San Francisco being destroyed by the earthquake, he could not testify as to that from personal observation. He got his information from the reports of the S. P. that they could not take the U. P. freight; also from newspaper reports. (4329) "MR. DUNNE. Mr. Severance, the fact is that the terminals were not destroyed; but the facilities of the shippers were destroyed. They were using our terminals and cars as storehouses. MR. SEVERANCE. Yes, I understand that. I know the ferry-house was not destroyed, but I know that the shippers' warehouses were destroyed. MR. LOOMIS. Are you willing to take that as a qualification of the witness' testimony on that subject? MR. SEVERANCE. Yes. I know it is true. Certainly."

Examples are typical.

Glad to afford opportunity to examine train sheets.

Terminals at San Francisco not destroyed.

The statement witness made in regard to the best speed to be maintained by freight trains from Omaha to Ogden to the effect that 11 miles an hour was the best, was intended to include the time between district terminals. It does not include the dead time at terminals—the time consumed in changing engines. A train is generally detained at a terminal about one hour, to make changes, and undergo the necessary inspection, to take the car numbers, etc. There are eight terminals between Council Bluffs and Ogden, not including Council Bluffs or Ogden. (4330) There are some district terminals where the time consumed would be more than an hour. More than an hour would be taken at Cheyenne. "At Sidney we would take more time than an hour, on that train, for the reason that it goes into Sidney about 10 or 10:30 at night. To save carrying the train on a dispatcher's sheet after the next day, we do not start it out until after midnight. It is an accommodation and a help to the dispatcher." Most of the grades and curvatures had

Best speed, 11 miles per hour, between district terminals.

been reduced in 1901. The new line over Sherman Hill was opened in the fall of 1901. There was not the same density of traffic in 1901 that there was in 1907 and 1906.

Merchants want regular rather than fast service.

(4331) The merchants at Salt Lake, all the merchants, are being given better service than was given them in 1901. "I think you will find that the merchants and the people generally want regular service, and not fast service. They want regular service. * * * They would rather have regular service that they can depend upon, than fast service that they could not depend upon." At times in 1909 the schedule was not made, but "I think as a general thing we have done very well with the schedule. * * * Say a train averages along about 4 or 5 hours late; that is doing very good, on a freight train of a thousand miles' run." He thought it was doing pretty well to get the traffic through in 104 or 105 or 106 hours. "It is an improvement on getting part of it through in 66½ hours and the balance of it a great deal longer—giving you more regular service, all of your freight." Witness' assistant was working on other work besides getting up these figures as to the run on various days; he was not assigned especially to that work; witness thought it took him nearly two months to get the information. This information appears on train sheets. There is one sheet for each district, there being 9 districts. They are filed by dates; by days. They are all filed together; but each district is kept by itself.

Improvement on practice of giving only part of traffic fast service.

Tracing train movements.

(4332) In compiling the information witness' assistant would have to select a train. The U. P. train leaving Council Bluffs to-day would appear on the sheet, from North Platte to Sidney, tomorrow, maybe. "It would generally appear by number; California Expedited No. 1, or No. 2, or No. 3; but, as I say, some of the dispatchers did not put it on their sheets, and we could not follow them all through. Q. If you would examine the first sheet and the last, showing the time of leaving Omaha and the time arriving in Ogden, if the number is on, you knowing about the number of days, would that help any, or do you have to look through each one? A. We naturally look through each one, to connect up each district—the train in to the district terminal and out, to see that some one has not made a mistake. * * * Q. You said you were giving the merchants of Salt Lake better time than before. I wish you would explain that a little more fully. A. Before, we handled a very high class freight on No. 53, which had the California and Utah freight; a few high class commodities; and the cars of other commodities, of lower class, were moved on extra trains. Now, we move practically all the Utah freight on the same schedule; there is very little if any freight which is not moved in the California Special at the present time. We run three and four sections of it, when we have the freight to move. * * *

Better service to Salt Lake.

No preferential merchandise freight.

"We give preference to high class freight; but practically all of it now we say is high class freight. We have very little dead freight—coal and lumber and grain, something like that. Then we use that freight to fill out our high class freight trains with. If we have not

enough of the high class freight to make a good train, we will fill it with the other freight, and it gets just as good service as the high class freight." When there is not freight enough to fill up a train, it is held for the next day, so as to be sure to get a full train load. That is in the interest of economy in operation; and also in the interest of economy in the movement of freight.

Tonnage requirements reasonable.

(4333) A shipper would not expect a railroad to run a train with his one car of freight or three cars of freight. He would want it to run a train with a reasonable number of cars of freight. If it was "20 cars of freight—the prospects are that we would arrange to get that freight out; in fact I know we would. We would use empty fruit cars to help out with, or other freight lying around. Give us a reasonable number of cars, and we will run them out of Council Bluffs as soon as we can get them ready." He doesn't send out anything except a whole train, if he can help it; because that is economical railroading. The schedule train leaves terminals every day, and practically on time every day. The schedule trains are not held waiting for freight to fill them up, but only the additional sections of the regular train.

Schedule trains not held for tonnage.

(4333) JAMES P. O'BRIEN.

O'Brien.

Portland. Vice Pres't and Gen. Manager, O. R. & N.

Resides in Portland, Oregon; Vice-President and General Manager of the O. R. & N. Company, and General Manager of the S. P. Lines in Oregon. Has been Vice-President and General Manager of the O. R. & N. about five years. (4334) Has been connected with that company all together about 17 years. Witness has had certain statements made up showing betterments made on the O. R. & N. from 1901 to 1909. The first statement, marked Defendants' Exhibit 154, shows the expenditures for additions, betterments and improvements made on the O. R. & N. Company's lines, from July 1, 1900, to June 30, 1909, showing a total amount of expenditures of $13,494,979.59. (4335) Defendants' Exhibit 155 is a detailed statement of the main line rail renewals referred to in Defendants' Exhibit 154, the total cost of which amounted to $1,422,721.62. Defendants' Exhibit 155 summarized, shows that during the period extending from July 1st, 1900, to June 30th, 1909, rails of weight less than 75 lbs. per yard were decreased to the extent of 367.71 miles, while mileage of rails of weight 75 lbs. per yard and over, was increased 418.39.

Statement showing expenditures for betterments on O. R. & N. from 1900 to 1909.

Rail renewals

(4336) Defendants' Exhibit 156 is a detail of the branch line rail renewals, included in Defendants' Exhibit 154. Summarizing on both main line and branches, there have been laid a total of 512.54 miles of rail, replacing rail of lighter pattern, at a grand total cost of $1,583,306.71. (4337) Defendants' Exhibit 157 is a detail of the items "Sidetracks," "Ballasting," "Tie-Plates," and "Turn-Tables," included in Defendants' Exhibit 154. The total amount expended for "Sidetracks" being $596,021.25; for "Ballasting," $495,159.35; for "Tie-Plates," $264,910.84; (4338) for "Turn-Tables," $72,231.35. Defendants' Exhibit 158 is a detail of the

Sidetracks, ballasting, tieplates and turntables.

Block signals, oil plants, track scales, fencing.

items "Automatic Block Signals," "Fuel Oil Plants," "Track Scales," and "Fencing," referred to in Defendants' Exhibit 154, the total cost of "Automatic Block Signals" being $373,933.06; of "Fuel Oil Plants," $98,564.36; (4339) of "Track Scales," $17,518.69; of "Fencing," $112,414.45. (4340) Defendants' Exhibit 159 is a detail of the item "Changes of Line," referred to in Defendants' Exhibit 154, the total amount expended for that item being $2,017,821.31. (4341) Defendants' Exhibit 160 is a detail of the item "Bridges and Trestles," referred to in Defendants' Exhibit 154, the total expenditure therefor being $2,280,407.66.

Changes of line.

Bridges.

Equipment.

(4342) Defendants' Exhibit 161 is a detail of the items "Locomotive Equipment," "Passenger Cars," and "Work Equipment," included in Defendants' Exhibit 154, the total net expenditure for "locomotives" being $1,437,656.24, for "Passenger Cars," $458,153.70, and for "Work Equipment" $285,401.67. (4343) Defendants' Exhibit 162 is a detail of the item "Freight Equipment," included in Defendants' Exhibit 154, the total net expenditure for "Freight Equipment" being $2,485,950.53. (4344) Defendants' Exhibit 163 is a statement of expenditures for additions, betterments and improvements on the O. R. & N. lines from July 1, 1909, to November 30, 1909. It shows a total expenditure of $768,864.96. The estimated cost of new work started and now under way, dating from November 30, 1909, is $8,247,861.54. It is shown in detail in Exhibit 164. (4345) Defendants' Exhibit 165 is a statement of the O. R. & N., showing new lines constructed and under way between July 1st, 1900, and January 1st, 1910, the total amount of the expenditure therefor being $4,742,220.25. (4346) Defendants' Exhibit 166 is a statement of the O. R. & N., showing freight and passenger traffic moved in 1900, compared with the year 1909. It shows tons carried one mile in 1909 to be 659,380,815, as against 338,429,897 in the year 1900, being an increase of 95 per cent. It shows the passengers carried one mile in 1909 to be 133,488,037 as against 58,034,786 for the year 1900, being an increase of 130 per cent.

Expenditures from July 1 to Nov. 30, 1909.

New lines.

Traffic moved in 1900 and 1909.

Defendants' Exhibit 167 is a statement of the O. R. & N., showing average consist of through passenger trains, January 1, 1900, to January 1, 1910. It shows the number of passenger trains in 1900 to have been 4; 1909, 6; 1910, 10. The number of mail cars in use in 1900 was 4; in 1910, 9. Dining cars in use in 1900, 2; 1910, 6. No observation cars in 1900; 2 in 1909; 6 in 1910. (4347) Witness produces six photographs showing the type of bridges which are now being erected by the O. R. & N. Witness thinks there were at least 40 new steel bridges erected during the time covered by the preceding statements. The lines of the O. R. & N., from Portland to Umatilla use oil as a fuel. Witness produces photographs showing the character of oil stations in use. The storage of the St. Johns plant is 55,000 barrels; at The Dalles plant 30,000 barrels, and the gravity tank from which the locomotives are oiled has a capacity of 28,500 gallons. Six oil storage plants have been erected on the

Consist of passenger trains 1900 and 1910.

Photographs of bridges.

Photographs of oil stations.

O. R. & N. during the time covered by the preceding statements. The photographs produced by witness are marked Defendants' Exhibits 168 to 175, inclusive. Witness produces a photograph of the new passenger station at Spokane. It was erected two years ago at a cost of about $55,000.00. (4348) The photograph of the Spokane depot was marked Defendants' Exhibit 176.

Spokane depot.

Witness has also caused to be prepared a statement, Defendants' Exhibit 177, of expenditures for additions, betterments and improvements on lines of the S. P. in Oregon, from July 1, 1904, to June 30, 1909,—totaling $4,213,660.00. This statement began with year 1904, because previous records were destroyed in San Francisco fire. (4349) Defendants' Exhibit 178 is a detail of rail renewals on the lines of the S. P. in Oregon, included in Defendants' Exhibit 177, the total expenditures for rail renewals being $663,626.27. (4350) Defendants' Exhibit 179 is a detail of the items "Ballasting" and "Tie Plates," included in Defendants' Exhibit 177, the total expenditure for "Ballasting" being $230,220.31, and for "Tie Plates" being $75,000.00. (4351) Defendants' Exhibit 180 is a detail of the item "Bridges and Trestles," which appears in Defendants' Exhibit 177, the total expenditure for that purpose being $1,251,173.45. Defendants' Exhibit 181 is a detail of the item "Automatic Block Signals," (4352) "Fuel Oil Plants," and "Track Scales," which are included in Defendants' Exhibit 177, the total for "Block Signals" being $120,988.48; for "Fuel Oil Plants" $105,015.88; for "Track Scales" $6,206.82. (4353) Defendants' Exhibit 182 is a detail of the item "Turntables," which appears in Defendants' Exhibit 177, the total expenditure for that item being $31,443.53. Defendants' Exhibit 183 is a detail of the item "Fencing and Cattle Guards" (4354) and "Side Tracks," which appear in Defendants' Exhibit 177, the total expenditure for "Fencing and Cattle Guards" being $3,552.09, and for "Side Tracks" being $144,252.36.

Expenditures for betterments on S. P. lines in Oregon.

Rail renewals.

Ballasting and tie plates.

Bridges.

Block signals, oil plants and track scales.

Turntables.

Fencing and side tracks.

Defendants' Exhibit 184 is a detail of the item "New Equipment Purchased," included in Defendants' Exhibit 177. In the detailed statement the equipment is subdivided into "Locomotive Equipment," "Passenger Cars," "Freight Equipment," the total expenditure for all new equipment being $1,247,670.55. (4355) Defendants' Exhibit 185 is a statement of expenditures for additions, betterments and improvements on S. P. lines in Oregon from July 1, 1909, to November 30, 1909, and of important new work started and under way, dating from November 30th, 1909. The total expenditures for additions, betterments and improvements between July 1, 1909, and November 30, 1909, amounts to $355,114.04. The estimated cost of new work started and under way is $372,757.59.

New equipment.

Estimated cost of new work.

(4356) Defendants' Exhibit 186 is an S. P. statement of new lines constructed and under way in Oregon, June 30, 1904, to June 30, 1909, the total expenditures therefor amounting to $2,785,121.09. (4357) Defendants' Exhibit 187 is a S. P. statement show-

New lines of S. P. in Oregon.

Average consist of S. P. through passenger trains in Oregon.

ing average consist of through passenger trains January 1, 1900, to January 1, 1910, on lines of that company in Oregon. In January, 1900, the average number of passenger trains per day was 4; in 1910, 6. The dining cars in 1900 numbered 2; in 1910, 6. Sleeping cars in 1900 numbered 6; in 1910, 16. Observation cars in 1900, none; in 1910, 2. Defendants' Exhibit 188 is an S. P. statement of freight and passenger traffic moved on lines in Oregon in the year 1900 compared with the year 1909. It shows that the tons carried one mile in 1909 amounted to 243,614,463 as against 132,142,241 in 1900, being an increase of 84 per cent. It shows that the passengers carried one mile in 1909 amounted to 117,934,081 as against 48,829,969, in 1900, being an increase of 142 per cent.

S. P. freight and passenger traffic moved in 1900 and 1909.

Leland bridge.

(4358) Witness produces three photographs, Defendants' Exhibits 189, 190, and 191, of a large structure known as bridge No. 495-A, erected near Leland, Oregon, showing the difficulties of bridge filling work being done by the S. P. in Oregon. The photographs show the old bridge and wooden structure. Witness produces a set of six photographs, Defendants' Exhibits 192 to 197 inclusive, typical of new bridge construction on the S. P. Lines in Oregon. (4359) Witness produces a statement, Defendants' Exhibit 198, giving a list of some of the new steel bridges constructed by the S. P. in Oregon. The statement includes twenty bridges and gives their numbers, location and length. Witness produces three photographs, Defendants' Exhibits 199, 200, and 201, typical of new depot buildings the S. P. Company is putting up in Oregon. The first one is at Albany, the next one is at East Portland, the next at Eugene. (4360) Witness produces photographs, Defendants' Exhibits 202, 203, and 204, showing the type of oil stations being erected by the S. P. in Oregon. The first is a picture of the storage tank and the gravity tank at Roseburg, Oregon; the next is a photograph of the large storage tank at Glendale; the next shows the storage tank at Glendale, also the gravity tank.

New steel bridges.

Typical depot.

Oil stations.

(TESTIMONY RESUMED, NEW YORK,
FRIDAY, FEBRUARY 25, 1910.)

Corrected statement of total expenditures.

Witness states that since the last adjournment he has discovered an error in Defendants' Exhibit 186. The figures shown on the original exhibit simply cover the amount of money that was spent on the Pacific Railway and Navigation Company lines, which is shown in the last column. A correct statement of the total cost is $3,480,407.35, including what has been spent and what witness expects to spend (4361) to finish up the line. Defendants' Exhibit 205 is a corrected statement of Defendants' Exhibit 186. (4362-4364) Defendants' Exhibit 206 is a detail of the items "Buildings and Miscellaneous," contained in Defendants' Exhibit 177. The total amount expended for that purpose being $334,510.26. (4365-4368) Defendants' Exhibit 207 is a detail of the item "Buildings," contained in Defendants' Exhibit 154, the total amount expended

Buildings and miscellaneous —S. P.

Buildings— O. R. & N.

therefor being $673,765.29. (4369) Defendants' Exhibit 208 is a detail of the item "Water Supply," contained in Defendants' Exhibit 154, the total amount expended therefor being $134,017.83. (4371) Defendants' Exhibit 209 is a detail of the item "Miscellaneous," contained in Defendants' Exhibit 154, the total amount expended therefor being $107,745.29.

Water supply —O. R. & N.

Miscellaneous —O. R. & N.

(4372) Witness has been connected with the O. R. & N. 17 years as assistant superintendent, superintendent of rail lines, general superintendent, general manager; has been general manager about five years. Has been connected with the S. P. since July, 1904, as general superintendent. (4373) His jurisdiction on the S. P. extends from Portland to Ashbrook and the branch lines in the state of Oregon. Previous to 1904 there were no common officials of the two companies in Oregon. They were separate. The consolidation took place about 90 days previous to the time witness was appointed general superintendent of the lines in Oregon. He was appointed in July, 1904. (4374) Witness' attention is called to Complainant's Exhibit 107, being the U. P. and S. P. systems' map. Witness could not say whether it covered all the lines of the O. R. & N. and the S. P. in Oregon, or not, unless he checked it up. "Q. You had better check it up, because I want to ask you about those branches there. A. It does not include the Lake Creek & Coeur d'Alene Railroad branch line running from Lake Junction to Farmington Landing." Lake Junction is in Washington, about 20 miles west of Spokane. Farmington is on the lake; that is a cut-off from Spokane to the Coeur d'Alene country.

Witness' jurisdiction on S. P.

Map of Harriman lines.

New lines not shown on map.

(4375) There is also an extension of the St. Johns line to Maegley Junction, Oregon, 3.79 miles. "It extends from St. Johns in the direction of the Columbia River, and was built for two purposes; one to give us a direct connection with the S. P. & S. line, that is the North Bank line; and again, later on, with an extension to give us a double-track line from Albina, which is our freight terminal, to Troutdale, about 20 miles east of Portland, on the O. R. & N." This 3-mile road is only a few miles out of Portland. There is also another line not shown on the map, being an extension from St. Johns to Troutdale. It is in connection with the other road, to give a double track into Portland. It is 14.28 miles long. Troutdale is 19 miles east of Portland on the main line. The Des Chutes Railroad is not shown on the map. (4376) It extends from Des Chutes on the Columbia River. "Q. My question is directed to any track that had been laid, any existing lines in 1908; not to contemplated work or survey work, but merely to branches that were in existence, over which you could operate trains. You have stated them all, have you? A. Yes. The Des Chutes Railroad that I have referred to, I do not think any track had been laid; I think we had made some expenditures on the line, in the way of surveys and acquiring rights of way, etc., but I could not say definitely that construction had been started at that time."

Des Chutes line.

The 14.28 miles between St. Johns and Troutdale is now under

construction. Counsel states to witness that he is not asking about contemplated lines or surveyed lines, but about lines that were in existence at the time the map was made. "Q. * * * Now, how about that other line, the St. Johns line to the bridge; was that in operation then? A. That was in operation. Q. But the one you say was built for the purpose of giving you double-track was not in operation? A. No, sir." The Troutdale line has not been completed. Witness doesn't think there were any other lines that were in operation at the time this map was printed. He considers it a truthful map, so far as showing the lines that the O. R. & N. had in operation at that time, with the exceptions he has stated. The same correction should be made on the Lake Creek & Coeur d'Alene; it is not in operation; but is practically ready to be operated.

Branch lines.

The terminus of the O. R. & N. is at Huntington. That is where it joins the Short Line. (4377) The O. R. & N. line running from Biggs to Shaniko was built 10 years ago by a gentleman by the name of E. Lytle and his associates. It was acquired by the O. R. & N. about 2 years, possibly 3, after it was built. It has not been extended by the O. R. & N. It is about 70 miles from the main line to Shaniko. The next line east of that one seems to leave the main line at Arlington, and runs up to Condon; it has been in operation about three or four years. It is 45.31 miles long. It has not been extended since it was built. The next line runs up to Heppner; it is about 45 miles long. It is an old line. Witness thinks it was built 15 or 16 years ago by the O. R. & N. direct. The next branch line is the Pilot Rock branch, about 12 miles long. It was built about 3 years ago. (4378) The next branch line is one running from Pendleton to Wallula. The next branch is the Elgin branch, running from La Grande to Joseph. There are no other branches running towards central Oregon. The map indicates a railroad running from Baker City to Tipton, owned by Mr. Eccles of Ogden, Utah. It is a narrow-gauge line. Witness thinks it reaches timber principally. Mr. Eccles is a lumberman.

Lines constructed into or towards central and eastern Oregon.

"Q. What lines, if any, have been constructed into or towards central or eastern Oregon by the O. R. & N. since that date? A. The Des Chutes Railroad Company is constructing a line from Des Chutes station, on the O. R. & N., to Redmond, Oregon." Redmond is 133 miles south of the Columbia River. It is not located on any river. It is about 10 miles west of Prineville, (4379) about halfway between Prineville and the Des Chutes River.

The Des Chutes Railroad follows the river for about 70 miles; then it leaves the river and goes across the country. They have been laying track on the Des Chutes Line for 60 days. The Hill interests are also building a line up the Des Chutes River. The name of the corporation building the line is the Oregon Trunk Railway. They have not laid any track. They have done some grading; rock work. Witness could not say to what extent, however. "Q. How far up from the Columbia River have they progressed with that sort of work? A. I could not say. I think they

have a few men scattered along through the Des Chutes canyon, a distance of 60 or 70 miles." As to their work up in the canyon: "I think we started construction three weeks or a month before they took any action whatever toward building the line—I mean active work in connection with building the line. (4380) Q. At the time you commenced construction you knew they were going up there, didn't you, or understood they were? A. Well I didn't know it, but there had been some talk about it. * * * I understood that the corporation was about to change hands; but I didn't know what they were going to do with it—whether they were going to build or not. Q. But you got busy right away, when you heard that, didn't you? A. We had been getting busy for some time. We had been getting busy for a year and a half. I might say, right here, that I had in my possession, for over a year before we started work, authority from the executive board and an approved appropriation for the building of that line; but we had not started construction for the reason that we could not get our maps approved by the Interior Department at Washington. They were government lands, and we did not want to start unless it was absolutely necessary, until all of the maps were approved. Q. Did you get them approved before you started? A. Part of them. Part of them are not approved at the present time. Q. But you did consider it absolutely necessary, when you heard about this other line, did you? A. Yes; we started work. That shows for itself.

Building of Des Chutes line began before rival line started.

Had been preparing for year and a half.

Could not get maps approved.

"Q. You said you were not going to start until you regarded it as necessary. But as soon as you heard about another line going up into the Des Chutes, you regarded it as necessary, didn't you? A. Not necessarily so. There was a great clamor for transportation facilities into the interior; and the matter had been taken up with us by the Chamber of Commerce and different commercial organizations in Portland, and we decided to start work. Q. That was nothing new, was it—this matter being agitated and taken up by the Chamber of Commerce? They had been doing that for years, hadn't they? A. No, sir; it never had been taken up with me; I knew nothing about it being taken up with all those organizations, until the time I refer to. There had been general talk— Q. Weren't you aware that the people in interior Oregon went to the legislature of Oregon because you people would not build in and develop the interior of that country, and got the legislature to pass a constitutional amendment authorizing the State itself to build lines in, because you would not build? A. Yes; I know that. Q. That did not occur three or four weeks before you started work on the Des Chutes road, did it? That occurred two or three years ago, didn't it? A. No, sir. Q. How long ago? (4381) A. Not to exceed, I should say, 5 or 6 months before we started work"—actual construction work.

Clamor for transportation facilities.

Legislature petitioned for state to build.

The O. R. & N. started actual construction work about 6 months ago. At the last session of the legislature that action was taken—about 5 or 6 months ago. "Q. Don't you know that the citizens and

business men of Portland had been trying to get your people to build into central Oregon, for several years, and had approached your president for that purpose, on his visits to Portland, years ago? A. I understand so. Q. That is what I thought. A. But the question you asked was if the matter had been taken up with the commercial associations, and I said not until a short time previous to the work being started. Q. There had been a great deal of agitation there, hadn't there, and a great many requests in one way or another? A. A great deal of newspaper agitation. Q.—which you don't care much about, do you? A. No. Q. That doesn't interest you? A. Well, I have seen so much of it and in checking it up I have satisfied myself, in many cases, that it did not voice the sentiments of the public.

Newspaper agitation does not always voice sentiments of public.

"Q. But when another line of road starts into your territory, that does wake you up, does it? A. Another line of road had not started construction into our territory when we started construction of the Des Chutes line. I think I said that. Q. But you said you had heard about a change of hands of a certain corporation? A. Well, if you read the newspapers there in Portland I think you would have to be aware of that fact. Q. The fact is, that you are both going up there now? A. I don't know. I know that we are going up there. I am not familiar with the plans of the other gentlemen. Q. Didn't your corporation go into the courts and try to enjoin the other line from building up that valley? A. No, sir; we did not. Q. What did you do about that? A. We went into court over some right of way matters which we claimed we were entitled to and which they claimed they were entitled (4382) to. We had not done anything to stop them from building their line. Q. Except using certain lands that they claimed for right of way? A. Well, you put it that way. I say they are using certain lands that we claim as our right of way. Q. Well, the court let them go ahead in spite of your efforts, didn't it? A. The matter has not been settled yet, as I understand it. I might say right now that there is no particular reason for scrapping or trying to keep them from building, because there is plenty of room in that canyon for two railroads to build. Q. There is plenty of business in central Oregon for two railroads, isn't there? A. Time will tell. I should say no. I should say any one line will have pretty slim picking for a number of years to come. Q. Is that the reason you have been so long in starting —because you thought it would be slim picking? A. To some extent, yes."

Another line had not started.

"We are going up there."

Did not attempt to stop rival line.

Not enough business for two lines.

The present proposed terminus of the Des Chutes line is about 150 miles from Burns. Between Des Chutes and Redmond the line runs through some very fair wheat country. The soil is light, and crops are very uncertain, depending largely on winter snowfall and moisture. The lands are what are termed "light" lands. They require a great deal of moisture to get any kind of a crop. After leaving the wheat sections, the line will tap an irrigated district, of

Character of country.

which Redmond is about the center. The line does not reach any timber. In the canyon they may be able to drive a limited amount of timber—drive some of the streams and deliver a reasonable amount. It is chiefly an agriculture line. 4.09 miles of the Des Chutes line has been constructed. (4383) The balance of the expenditures on that road were for grading, surveying and other expenditures. The other line has not laid any track. "I might state, if permitted to do so, in connection with this 4.09 miles of track laid, that within 30 days we will have at least 50 miles more of grade ready for track. We have now ready for track probably 40 miles of grade, but it is spread out over the district, and they will have to clean up the little pieces in between; so in 30 days, I think there will be 50 miles of grade ready for rail. Q. You now intend to complete the line as soon as you can, to Redmond? A. Yes, sir. All the track material is on the ground, ready to lay, as far as the track is in shape for it."

Work done on Des Chutes line.

Albina is the Portland freight terminal for the O. R. & N. (4384) The Pacific Railway and Navigation Line is the most northerly of the branches of the S. P. shown on the map, and is west of Portland. It runs to the Pacific Ocean and follows the coast to Tillamook. That road was constructed about 18 months ago. It will serve principally a timber country; a little dairying on the coast side of the range, but that will give very little traffic. Witness believes the line will be running through to Tillamook not later than the first of August this year. The Crabtree-Albina cut-off is a line that was built on account of two very bad rivers—the Santiam Rivers; they were out of their banks all the time, leaving the bridges high and dry. "We have two steel bridges, 500 feet in length each. Every season the river would be out of the bank and cut a new channel. So we built this as a cut-off, so we could get a good foundation for the bridges and hold them." That road is shown on the map, running from Lebanon to Crabtree. It connects what is known as the Woodburn branch running from Woodburn to Springfield. That cut-off, witness thought was about 13 miles long. It is not shown on the map. About 5 miles of the old line had to be abandoned on account of water trouble.

Pac. Ry. & Nav. line.

Crabtree-Albina cut-off.

(4385) The next S. P. branch is the Lafayette and St. Joseph cut-off, 2.33 miles. That was built for cut-off purposes, too. It was found that by building this cut-off 5 miles of unprofitable line could be abandoned. There are very expensive bridges on the old line. The next line is the Springfield and Henderson cut-off, built to connect up the Woodburn branch with the main line. The only other branch that has been constructed since July 1, 1904, is the Beaverton & Willsburg. That is a cut-off leaving the west-side division at Beaverton, a short distance out of Portland; coming down to the Willamette River, crossing the river and connecting up with the east-side line at Willsburg. It was built principally to take the heavy freight traffic off from 4th Street in Portland. The Corvallis & Eastern was bought about three years ago. It runs from Yaquina

S. P. branches constructed.

Corvallis & Eastern.

Bay easterly, and ends at Detroit. It is about 149 miles long. That line had a right of way to the summit of the Cascades, but witness does not think it has any right of way east of the summit. (4386)

Coos Bay line.

Witness' attention is called to a series of dashes, which indicates a line leaving the Shasta Route main line at Drain, running westerly and southerly to Coos Bay. No work is being done on that line at the present time, but quite a large amount of money has been spent on it.

"Q. The fact is, about that line, is it not, that you did at one time, about the fall of 1905, do some work in the way of putting in bridges and grading, that you laid a little track which you afterwards took up, and finally declined to go on with the line unless the people at Coos Bay would guarantee you four per cent. on your investment over and above expenses of operation and maintenance. Wasn't that the story, in substance? A. I think that is right, except that I do not think there has been any track taken up. I might say, right here, that as far as the line you refer to is concerned, while it is in my territory it is not under my jurisdiction; it is under the jurisdiction of the chief engineer, at San Francisco, Mr. Hood, who is in charge of construction. Q. How long ago was construction work on that line abandoned? A. I think it was started early in 1907. Q. Wasn't it earlier than that? A. I don't think it was earlier than that. To the best of my recollection it was in 1907. I would not know definitely, because it is not under my charge."

Work stopped.

(4387) Witness qualified his testimony as to the work being abandoned by saying that it had been stopped. "Q. * * * And you have not resumed it, or your company has not? A. I don't think so." There is a line in Oregon, not owned by the S. P., running from the Willamette River, opposite Salem, through Dallas, Oregon, and into the timber; known as the Salem, Falls City & Western. Its main traffic is timber. The president of the company is Mr. Gerlinger of Portland. It is about 30 miles long.

Salem, Falls City & Western.

Oregon Southeastern.

There is another line running out of Cottage Grove, known as the Oregon Southeastern. It is 12 to 15 miles long. Witness does not know who owns it. (4388) There is also a line known as the Pacific & Eastern, going east from Medford, Oregon. That is down the Rogue River Valley, close to Ashland. It is 13 miles long, and there are about 20 miles or more under construction. It is being built by John R. Allen.

Pacific & Eastern.

(4389) The O. R. & N. mileage between Portland and Spokane is about 42 miles longer than the North Bank road. The O. R. & N. reaches Walla Walla, and it has branches that pretty well cover the fruitful part of southeastern Washington. It also reaches the Coeur d'Alene country in Idaho. It reaches Lewiston with the line owned jointly with the N. P. "The line from the Navigation tracks at Texas Ferry, that is, the main Spokane line, to Lewiston, was built by the O. R. & N. Company, but it had been turned in with some lines which the Northern Pacific built north of Lewiston, and is now being operated as a joint line by the Camas Prairie Railroad

Territory served by O. R. & N.

Company." The line is operated strictly independent, and the traffic departments have to solicit their own business. The employees of the joint line are neutral. All of the lines in eastern Washington that witness has spoken of are competitive with the N. P., and to some extent with the G. N. The Palouse country is a very rich wheat country reached by the rails of the O. R. & N.

S. P. passenger train service in Oregon.

(4390) Witness' attention is called to Defendants' Exhibit 187, showing the consist of through passenger trains on the S. P. in Oregon. From 1900 to 1909, 4 regular trains were run, 2 in each direction, between San Francisco and Portland. "These trains of course run in two sections and three sections, as the business required. We had only 2 regularly scheduled trains, but we frequently ran two and three sections on No. 15 and No. 16, which were the popular trains." Defendants' Exhibit 187 does not purport to show the extras that might be run, nor the sections. The same is true as to the 1910 statement, which indicates 6 trains. The third San Francisco train was put on four or five or six months ago. It is called the Shasta Limited fast train. It leaves Portland at 6 o'clock in the evening. It reaches San Francisco in 27 hours. The old time was 36 hours. Witness thinks the other trains are still 36 hour trains. Those passenger trains run pretty full, as a rule, in one direction.

Tide of travel changes.

(4391) "During certain seasons the traffic is heavy southbound, and then the tide of travel turns the other way. As a general rule, when it is running heavy in one direction, it is light in the other." Defendants' Exhibit 167 covers the through trains from Portland to Huntington and beyond. "They are, all of them, either through trains or have through connections." By through witness means Omaha and Chicago. It also includes the through train from Portland to St. Paul via Spokane and the Canadian Pacific. In January, 1909, the Soo-Spokane route was not open to Portland. "MR. DUNNE. That one train a day to Spokane applies to all of these years; as well to the previous years as to 1910? WITNESS. Excepting that previous to putting on that through Portland-St. Paul train by the Canadian Pacific, via Spokane, the train was strictly a local train between Portland and Spokane, (4392) but the train now does business between Spokane and Portland, and then it goes on through to St. Paul and Minneapolis over the Canadian Pacific."

Train via Spokane.

Trains via Huntington.

In 1900, when the exhibit referred to shows 4 trains a day, that would be only one train each way by Huntington, and after that 2 trains each day by Huntington. At present there are 4 trains by Huntington each way, as against one each way in 1900. Freight trains from Huntington to Portland, a distance of 404 miles, consume 34 hours and 55 minutes. That includes the terminal stops, which approximate from 5 to 6 hours. The Blue Mountains are located between Huntington and Portland. The maximum grade there is 116 feet to the mile for a distance of 17 miles at one point,

and a distance of 11 miles at another point. (4393) The speed per hour of the freight train referred to is a trifle under 12, between 11 3-4 and 12 miles per hour.

Handles 33½% to 40% of number of trains on U. P.

Witness is of the opinion that, between Umatilla and Portland, he is handling not over 33 1-3 per cent. of the number of trains, possibly 40 or 50 per cent., that are being handled on the U. P. main line. That is a mere estimate. There are about 4 miles of maximum .65 per cent. grade between North Powder and Telocaset. There is nothing more to speak of; rolling country up and down.

O. R. & N. has no double track.

The O. R. & N. has no double track. "We are running that fast train now with practically 75 per cent. of the regular rating for other trains.

"Q. Why do you try to expedite the business to such an extent instead of operating economically, the way the Union Pacific does at Ogden? A. I think the conditions are entirely different. We have a very peculiar situation at Portland. We do not own our own tracks, and operate on the west side of the Willamette River. The work is done by the Northern Pacific Terminal Company, which is owned (4394) jointly by the O. R. & N., the Southern Pacific and the Northern Pacific. The Terminal Company handles the business as it is delivered to them by each line. For instance, the Northern Pacific train comes in at 6 o'clock in the morning, and an O. R. & N. train comes in at 6:05, and a Southern Pacific train comes in at 6:10, and they are handled in their order. Inasmuch as practically all the merchandise business is handled on the west side of the river, in order to make early morning delivery we expedited this business so that the train would reach Albina and be delivered to the Terminal Company and leave a leeway of 5 or 6 hours for the freight to be weighed, switched and delivered at the warehouses as well as on the industry tracks which are located all through the Terminal yards. In other words, a train getting into Albina at 4 o'clock in the morning, by the time it was broken up by the Navigation switch engines, put into a transfer, and delivered on the west side of the river, would probably not get over there until 7 o'clock in the morning. If we found a Northern Pacific or Southern Pacific freight train in ahead of us, in all probability that freight would not be weighed up and spotted on the team tracks and on the industry tracks and on the house tracks until 10 or 11 o'clock. That meant practically delivery the following day, for the reason that the merchants there do all their teaming on the inbound business in the forenoon and use the afternoon exclusively for delivery of their outbound business. So that if a car was not placed on the west side, say, at 8 o'clock in the morning, in all probability it would not be touched by the teamsters until the following day, and it would make probably 24 hours later delivery.

Merchandise train expedited for early delivery.

"Q. And you would be handicapped in competing with the Northern Pacific to that extent? A. No, we would not be handicapped competing with the Northern Pacific, because they would

probably be in the same boat if their trains get in along early in the morning; but their trains arrived, say, 2 or 3 o'clock in the morning, which gave the Terminal Company a reasonable time to break up the trains, weigh and spot the cars at the different locations. Their trains were delivered into the Terminal yards direct, while our trains were delivered at Albina, and we had to switch and make transfer. We do not run any freight trains on the west side of the river; our terminals are on the east side. Q. If you were a day longer in getting stuff over to the merchants than the Northern Pacific, it would be a handicap to you in getting business? A. I presume it would. Q. It is for the sake of getting business and making prompt deliveries that you expedite this movement? A. I assume that is the point in question."

Prompt deliveries.

(4395) Witness thinks that the movement of freight equipment per mile per day on the O. R. & N. runs from 28 to 31 miles per day. (4396) "Q. Mr. O'Brien, I find that Mr. Kruttschnitt in his testimony did give those figures as to the average movement per car per day of freight cars. He gave the Oregon Railroad & Navigation Company at 23.9 instead of 31 as you gave it. A. I think he is right. I have a statement made up by the Bureau, the American Railway Association, handling freight car matters. It is for August, 1909. The statement is dated February 10, 1910. I assume this is the last period they have this information worked up for. In referring to it I find that the O. R. & N. made an average of 24.9. Q. Whatever period it was that Mr. Kruttschnitt intended to cover by this, he gave it as 23.9. It was for the year ending June, 1909; he had the entire year's average. A. Well, that is not far out of the way. This is for the month of August, and during a busy period. The bulletin also shows the average movement per car per day for the U. P. for the same month; it is 47.1. For the G. N. it is 25.1; for the N. P., 23.9; for Santa Fe Railroad, 27.6 miles, and the Santa Fe Coast Lines (they have it divided up) 49.5 miles.

Average car mileage per day O. R. & N.

Average movement per car per day on other lines.

(4397) Witness states that he has prepared details called for by Mr. Severance in regard to loss and gain in branch line mileage shown in one of the exhibits introduced in evidence, in connection with his direct examination. The statement is marked Defendants' Exhibit 210, and is set out on page 4397. In regard to lines being constructed in Oregon—the number of the different railroads operating in the state of Oregon not owned or controlled by the O. R. & N., the S. P., or the O. S. L. "I cannot testify for the line east of Huntington. I think on the Oregon Railroad & Navigation lines I mentioned the Sumpter Valley, the line leading from (4398) Baker City to Tipton, as the only one. I wish to add to that the Great Southern—a line of from 15 to 20 miles long, running from Dalles to Dufer; and the Mount Hood Railroad, a line about 15 miles long, running from Hood River in a southerly direction. I don't know the terminus of the line at the present time. They have put on a slight extension. Also the Cen-

Other roads operating in Oregon.

tral Railway of Oregon, a line about 10 miles in length, in the Grande Ronde Valley, running from Union to Cove; also the Oregon Electric, running from Portland to Salem, in the Willamette Valley, with a branch line serving Hillsboro, Oregon, with a mileage of about 65 miles." It does a freight business as well as a passenger business. Also the Portland Railway, Light & Power Company, operating a line from Portland to Oregon City and a line from Portland to Casadero.

"Q. Does it do a freight business as well as a passenger business? A. These are the portions of the line that do the freight business. The Portland Railway, Light & Power Company, I might explain, owns and controls all the city lines of Portland, also the suburban lines, handling passenger traffic, but the lines I refer to now are the lines that they handle both passenger and freight business over. I would also like to make another statement. Mr. Severance asked me this morning in regard to new lines under construction on the Southern Pacific. I did not include in the statement I made, which has been used as an exhibit, the Oregon Western, which is the name of the corporation, built from Drain to Coos Bay, or the Oregon Eastern, which is built from Natron in a southerly direction, connecting up with the Southern Pacific line at Klamath Falls. I wish to state that both of these lines, while a part of them are in my territory, are not under my jurisdiction, the construction work being under the jurisdiction of the chief engineer of the Southern Pacific Company, Mr. William Hood, located at San Francisco." The Oregon Eastern, however, has at present time under construction, 25 miles of line south from Natron. "Also 35 miles in a northerly direction from Klamath Falls, and it is my understanding that at the end of the fiscal year next year's appropriations will carry sufficient funds to finish the balance of the line between those points, I think about 100 miles, closing up the gap between the extensions."

Lines of S. P. under construction in Oregon.

Oregon & Western.

The Oregon Western, the projected line from Drain to Coos Bay, is not now under construction; work on that has been suspended for several years. "But I think work will be started at an early date. (4399) Q. You think there has been a change in the view since the change of management of the road? A. No, I wouldn't say that. I think possibly financial conditions might cause the change. I have reason to believe that work will be resumed on this line at an early day. I don't know definitely that it will be. Q. You don't know that definitely? A. No. Q. Now, the Oregon Eastern, that is the corporation, as I understand, building the line running around the east end of the Siskiyou Mountains, up to Klamath Falls? A. I don't know whether the line from Klamath Falls to Weed, where it connects with the present Portland-San Francisco line, has been built under the Oregon Eastern, but I know the work from Klamath Falls north, now under construction, and the work from Natron south, now under construction, is built under the Oregon Eastern corporation." This line was built from Weed, in California, up as

Oregon & Eastern.

far as Klamath Falls. "Q. That is what I say. A Southern Pacific line—we will put it that way. A. Yes, that is right." It was proposed and it was intended when that was started, to carry that line up to Natron. And connect with the S. P., so as to avoid the grade with the Siskiyou Mountains. "Q. That is the line you had in mind? A. Yes, the Oregon Eastern.

Electric lines.

"Q. Now these electric lines that you spoke of, the Oregon Electric line running up to Salem, with a branch line to Hillsboro, and the Portland Railway, Light & Power Company, Portland to Oregon City and Portland to Casadero; they are ordinary electric railroads, but they do freight as well as passenger business. A. Yes, sir. Q. Is it necessary in through shipments to transfer, or do they take your cars right out on those lines? or do they do a local business only? A. I would not say definitely about that. I think Mr. Miller can answer that question. I will say as far as the Portland Railway, Light & Power Company is concerned that they do not have to transfer. We deliver our equipment to the Portland Railway, Light & Power Company for loading at points on their line. We interchange not only traffic but equipment with them." They run up as far as Oregon City, about 10 miles out of Portland. (4400) That is where the paper mills are. Casadero is out in an easterly direction from Portland, about 20 miles. That company acts really as a feeder to the S. P. and the O. R. & N. "They have a rail connection with us also at Fairview, which is about 12 or 14 miles out of Portland * * * on the O. R. & N. And they make a direct transfer to the Southern Pacific at East Portland." The Great Southern, which runs from Dalles to Dufer, is 12 to 15 miles long. It is owned by a gentleman named Heimrich, living at Portland. It is operated for general railroad purposes. It serves an agricultural district. A great deal of the wheat raised on that line is brought to The Dalles, and then ground into flour and shipped out either by rail or water. The river boats go to The Dalles. The Mount Hood road runs 15 miles from Hood River, carries lumber principally, but they handle quite a little fruit. It is owned by David Eccles of Ogden. He owns a mill at the upper end of the line. He has no mill right at Hood River. (4401) The Central Railway of Oregon runs from Union to Cove in the Grande Ronde Valley. Union is on the O. R. & N., 310 miles from Portland; about 90 miles from Huntington. The road is about 10 miles long. It is controlled by some New England people. It taps an agricultural and fruit country. Handles wheat, fruit, beets, merchandise. As a matter of fact, the town of Union is about 4 miles off the O. R. & N. They have a Union station, but the town is not on the railroad. This line serves the town of Union, making connections between the railroad station and the town.

Great Southern.

Mt. Hood road.

Central Ry. of Oregon.

Sierra Nevada High Line.

The Sierra Nevada, High Line, 4.46 miles, is in the Coeur d'Alene district, northern Idaho. The Dayton-Turners line, 11.65 miles, is in the Walla Walla district, about 20 miles east. The Elgin-Joseph line, 62.83 miles, is the one running northerly from

Other lines.

La Grande. The East Portland-Albina line, 1¼ miles, is a double track in the city. The Albina-St. Johns track is the one witness spoke of this morning. (4402) The same is true of the St. Johns-Maegley Junction, 3.79. The Columbia River & Oregon Central Railroad Company, from Arlington to Condon, and the Umatilla Central, which runs out to Pilot Rock, are lines which witness spoke about this morning. The other lines acquired by purchase are the Columbia Southern, the Shaniko line, and the Washington to Howard streets, .4-10 of a mile, in the city of Spokane. That is the total branch line mileage in that period of nine years.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR DEFENDANT.

VOLUME X.

NEW YORK CITY, FEBRUARY 25, 1910.

(4403) E. E. CALVIN (2).

Calvin.

I am Vice-President of the S. P. and General Manager of its Pacific System—lines west of the Rio Grande, New Mexico, and Sparks, Nevada; and south of Ashland, Oregon. "I began in 1872, as messenger boy in the telegraph office. From that time until 1877 served as telegraph operator and agent upon the Big Four line, with the exception of about a year and a half when I went to school. I went to the Union Pacific in 1877, and was telegraph operator, station agent, conductor, train dispatcher, train master, until May, 1887, when I went to the Missouri Pacific as superintendent, remaining there four years. Returned to what is now the Oregon Short Line (it was then a part of the Union Pacific System) as superintendent of the Idaho Division, in February, 1891. Remained in that capacity for four years, and then spent two years as general superintendent of the International Great Northern Railroad in Texas, returning to the Oregon Short Line as general superintendent at the time of the reorganization, after the receivership, on March 16, 1897. Appointed assistant general manager about three years later, and remained there until the 1st of April, 1904, when I went to Portland as vice-president and general manager of the O. R. & N. Company and general manager of the Southern Pacific Company lines in Oregon. In February, 1905, went to San Francisco as vice-president of the Southern Pacific Company and general manager of the lines I have described."

San Francisco. Vice Pres't and Gen. Manager, S. P.

His railroad experience.

Within a few days after taking charge at Portland I was instructed to extend this Shaniko branch line into central Oregon, but on investigation protested against it, not thinking it was the proper way to develop central Oregon. (4404) "The products of cen-

Objected to extension of Shaniko branch.

Recommended an east and west line.

tral Oregon are small grain, live stock, wool, and timber, principally. The live stock, timber, and wool move eastward. I thought it unprofitable to build a line that would necessitate moving that traffic over a heavy grade to the O. R. & N. main line along the Columbia River, over two divides between there and Huntington, recommending instead the building of an east and west line through central Oregon, which would allow the products I have mentioned to move out over a practically level or generally descending grade to the Missouri River. The grain produced in central Oregon, or which would be to a greater extent if they had more railroad facilities and more irrigation, would of course go to the Pacific coast either for milling or export. It was, therefore, my recommendation that instead of building these lines in farther south from the Columbia River, than a distance necessary to take care of the grain on the plateau country, which generally extends from 30 or 40 miles south from the Columbia River, that this east and west line be built and a line around the Siskiyou Mountains, which we are now constructing."

Congestion following San Francisco fire.

The S. P. terminals at San Francisco were not destroyed in the fire—inadvertently so stated here, I think—but there was a condition of congestion after the fire from the destruction of the warehouses and jobbing houses and retail stores of the city, which necessitated the ordering of new stocks of goods, together with what was of course a greater volume of traffic, that of building material. Our facilities were not adequate to that burden. Our cars were used to a large extent as storehouses, it was hard to get the freight out of them, at one time we had as many as 8,000 cars under load in California for San Francisco Bay points. Since 1900 260 miles of new rails, 75, 80 and 90 pound, have been laid between Oakland Pier and Sparks, at a cost of $1,241,000; (4405) also 396 new bridges, culverts and trestles at a cost of $864,000, 425 miles of telegraph wire at a cost of $21,000, 290 miles of new ballast (including double track territory, it being only 246 miles from Oakland Pier to Sparks), at a cost of $612,000; 46.7 miles of new sidings and extension of old, at a cost of $450,700; 187 miles of automatic signals for main track, and 55 miles for second track, total 242 miles, at a cost of $223,000:—all between the same termini. Sunset freight is scheduled over the Coast Line, the line down the Coast from San Francisco to Los Angeles through Santa Barbara.

Betterments on S. P. since 1900—Ogden route.

Betterments on S. P.—Sunset route.

(4406) Items on Sunset Line, between San Francisco and Rio Grande, Coast Line included, "New rail, 75, 80 and 90 pounds, 728 miles, cost $520,000; automatic block signals, main track, 822 miles, second track 60 miles, total 882 miles, cost $911,000; new bridges, culverts and trestles, 1,567 in number, cost $1,552,000; miles of new telegraph wire, 1,627; cost $73,000; miles of ballast 1,229, cost $1,296,900; new sidings and extensions of old, 205 miles, cost $1,515,900." The snowsheds on the S. P. line between Sacramento and Sparks made that portion of the lines especially ex-

pensive. The Rio Grande River—being the line between Texas and New Mexico, is the point from which our trains run into El Paso, a distance of 4 miles, over the G. H. & S. A. line, which is under Mr. Fay's direction. My jurisdiction goes to Rio Grande, Mr. Fay's thence to New Orleans; in a general way, one line has been spoken of as the line to El Paso, and the other as the line from El Paso to New Orleans. Between San Francisco and El Paso on Sunset Line, "changes of line made since 1901, Montalvo to Burbank, California, 59 miles, cost $2,425,900; Strauss to Rio Grande, 13 miles, $626,000; change of line through the city of Santa Barbara, $500,000; the Bay Shore cut-off, from San Francisco southerly, 9 miles, $9,273,000." This is in round figures.

Changes of line on Sunset route.

For reconstruction on Sunset Line, San Francisco to El Paso, since 1901, elimination of curvature and reduction of grades, cost being estimated on account of loss of records in San Francisco disaster, I have the following: "Between Soledad and Santa Margarita, 36 miles; Elwood and Ventura, 25 miles; Los Angeles and Dolgeville, 7 miles; Yuma and Araz, 5 miles; Vail and Mescal, 19 miles; Sybil and Manzoro, 15 miles; Glade and Coholla, 9 miles —a total of 116 miles. * * * (4407) Estimated at $15,000 per mile would be a total of $1,740,000. This estimate was made by our chief engineer, who did the work." The Sunset Line goes through some desert country, and we have made very large expenditures for wells and water treating plants. The shortest route of the Oregon line intersects what is known as the Central Pacific line at Davis, 75 miles east of San Francisco. My jurisdiction goes to Ashland, and the distance for the line between Davis and Ashland is 329 miles. Since 1901 we have laid on that line, in round figures, 203 miles of 75 and 80 pound rail, costing $959,000; have put in 361 new bridges, trestles and culverts, costing $711,000; 151 miles of automatic block signals, costing $181,000; 23.4 miles of new sidings and extensions of old, costing $415,000; 244 miles of new telegraph wires, costing $7,000; and 218 miles of ballast, costing $450,000.

Curves and grades.

Water.

Betterments on S. P. between San Francisco and Ashland.

We have under construction a new California-Oregon line by way of Klamath Falls, the present starting point in California being Weed, but the completed line will have its junction at Black Butte, some 15 miles southerly from Weed, and the terminating point in Oregon will be Natron. The present line between Davis and Portland has a maximum grade of 3.3 per cent in both directions; this new line will have a maximum grade northbound of 2.3 per cent, and southbound of 1.5 per cent. The distance will be shortened about 15 miles. And we estimate the cost will be $18,900,000.

New line to Oregon.

(4408) The Klamath Falls line was authorized in the summer of 1905, but not begun, I think, until some time in 1906. When completed, we expect to move all through freight that way except what may originate on the old line. It will be a much more economical line to operate freight trains over. As against extending the Shaniko line, which I do not think was the best way to develop

Proposed east and west line through Oregon.

central Oregon, I recommended a line to come in from the east. It has not been built, but survey has been made; this line that we are building from Klamath Falls has not reached the proposed junction point of the east and west line. It is 300 or 350 miles from Klamath Falls, across to the east side of Oregon; the country there is still without railroad facilities, and the people in the vicinity of Burns have to drive their cattle 150 miles to Ontario; the line I recommended being built gives egress to cattle, wool, etc., to the east, and is through Malheur Canyon. (4409) It has been built westwardly, I think, stopping at 15 or 20 miles—that was not under my jurisdiction; it was put in operation, I think, some three or four years ago. The only line being built at present, reaching up into central Oregon, is this Des Chutes River line, as far as I know.

Fay.

(4409) THORNWELL FAY.

New Orleans, Vice Pres't and Gen. Manager, S. P. lines, New Orleans to El Paso.

I am and have been Vice-President and General Manager of the S. P. lines New Orleans to El Paso, since April 1, 1904; began service with what is known as the Morgan Railroad, June 1, 1878, as telegraph operator, then station agent, train dispatcher, private secretary and chief clerk to the General Manager, Manager's assistant and General Superintendent of the Louisiana lines from January 1, 1902. (4410) On the New Orleans-El Paso line, before 1895, there were no rails heavier than 61½ pounds—most of the rails 50 pounds. With the exception of a few rock cuts that had rock ballast, where the stone had been broken during the construction, there was no ballast except from alongside the road—dirt, sand. The first 75-pound rails were laid in the latter part of 1895. After 1901 the policy has been constantly to lay heavier rails; standard now is 90 pounds, and all the rail we are now laying is 90 pounds, we went from 75 up to 76, from 76 to 80, and from 80 to 90, beginning to lay 90-pound rail within the last three years. Since 1901 a large portion of the line has been ballasted with gravel, and some of it with slag from the El Paso smelter—the best ballast we have, we cannot get enough of it.

Rails before 1895.

Since 1901, standard rail, 90 lbs.

Ballast.

New bridges.

Our bridges have been reconstructed almost entirely from El Paso through to New Orleans, with the heaviest character of bridge construction, using steel in the bridges proper; and in renewing ordinary trestles we have used creosoted wood. The New York steamers originally went to Algiers, just across the river from New Orleans. The first freight steamer New York to Galveston was in August, 1902. (4411) Prior to 1902 we had generally three steamers a week each way, New York-New Orleans; some dull months in the summer time two steamers a week each way; since 1902 three steamers a week each way, generally, between New York and Galveston, and concurrently two steamers a week—between New York and New Orleans, the New Orleans freight steamers landing on the New Orleans side instead of the Algiers. As to the terminals at Galveston and Algiers, "I have a map here showing the comparative difference between the two terminals. In

Boat service.

Map of boat terminals—Algiers and Galveston.

a general way, at New Orleans there is a rise and fall in the river, from extreme low water to extreme high water, of approximately 20 feet. The wharves at New Orleans are built up and down the stream; and during extreme low water there is quite an elevation to lift freight up to get it into the cars. At Galveston the property purchased was a large block of property fronting on the bay, and it was practicable to build up to date facilities for handling the steamship business from ships to cars and from cars to ships. The rise and fall of the tide at Galveston is about two or three feet."

Improvements at Galveston and Algiers.

The improvements at Galveston up to January 30, 1909, cost $2,118,935—the terminal accommodating fourteen ships, while the capacity at Algiers is four. The trackage at the Algiers docks—leading immediately to the docks—held 71 cars, and at the Galveston docks 547. (4412) The steamship yards at Algiers had a capacity of 281 cars, and at Galveston 1,225. For December, 1909, average time New York to El Paso was eight days, 22 hours and 15 minutes; in 1902 it was 9 days 8 hours and 14 minutes; in 1900, via Algiers, it was 9 days 6 hours and 33 minutes. Since 1900 local business moving west of New Orleans, between Houston and New Orleans—362 miles in distance—has increased very much. Lafayette is the first through freight terminal out of Algiers, about 144 miles from New Orleans. "We are building what we call a cut-off, across there; it is a little less than 53 miles from Lafayette to the west bank of the Mississippi River opposite Baton Rouge. We have been constructing that for several years. It is not quite complete. The construction is very difficult; a great deal of it is through an extremely difficult swamp to build a road through. When completed, that line will make a saving in time, on through freight, in connection, for instance, with the Illinois Central at Baton Rouge, of from 24 to 48 hours in through time."

Cut-off between Lafayette and Baton Rouge.

Running time to El Paso.

In the summer of 1902, the schedule time for moving freight from Galveston to El Paso was 49 hours and 50 minutes (4413)—the running time was 17.6 miles per hour; in 1907 the schedule time was 60 hours and 40 minutes and the running time excluding stops was 17½ miles per hour. In 1901 the freight time, Algiers to El Paso—schedule time—was 68 hours 22 minutes. In 1909, Galveston to El Paso, 72 hours 19 minutes. In 1901 the time El Paso to Algiers was 78 hours 30 minutes—schedule time; (4414) and in 1909, El Paso to Galveston, 74 hours 30 minutes, running time 17.3 miles per hour. Total dockage frontage at Algiers was 1,755 feet; at Galveston 6,235 feet. (4415) Referring to the New Orleans-El Paso line, my jurisdiction going to the Rio Grande, 3½ miles west of El Paso. "The total expenditures, 1902 to 1909, inclusive, for track, roadway and other like improvements, were $7,938,151.30. During that time there was new equipment bought and charged to capital account, amounting to $4,744,910.87. This makes a total for those two items of $12,683,061.17. In addition to that there was charged against operating expenses, for renewing light rail with heavy rail, the additional weight of the rail, which, under the new Inter-

Expenditures for betterments, 1902 to 1909.

state Commerce Commission classification is charged to capital account, $2,504,630.07. And in addition there was equipment purchased and charged to renewal fund, that is, operating expenses, amounting to $3,780,041.03. * * * That makes a grand total of $18,967,732.27."

Expenditures, 1894 to 1901.

For the years 1894-1901 the amount spent for betterments and improvements, including new equipment purchased and charged to capital account, was $8,766,125; for the years 1902-1909, $12,683,061. Miles of single track in 1901, 1,195.96; in 1909, 1,193.61. "Miles of additional main track, that is, second track, double-track, 48.09 in 1909, and 39.76 in 1901; an increase of 8.33 miles in double-track. The next item is the weight of rail for different years. In 1909 we had eighty-seven hundredths of a mile of sixty pound rail; that was in a yard, but it was classed with the main track; and none in 1901; an increase of eighty-seven hundredths of a mile. In 1909 we had eighty-six hundredths of a mile of sixty-one and a half pound rail, also in a yard, as against 577.72 miles in 1901; a decrease of 576.86 miles. In 1909 we had 366.64 miles of 75 pound rail; in 1901 we had 448.98 miles; a decrease of 82.34 miles of 75 pound rail. In 1909 we had 7.69 miles of 76 pound rail in the main line; in 1901 we had 111.97 miles of 76 pound rail; a decrease of 104.28 miles. In 1909 we had 680.64 miles of 80 pound rail; in 1901 we had 97.05 miles of 80 pound rail; an increase of 583.59 (4416) miles.

Rails.

"In 1909 we had 184.99 miles of 90 pound rail, and in 1901 we had no 90 pound rail; an increase of 184.99 miles. Since June 30, 1909, we have bought 135 miles of 90 pound rail, most of which has been delivered, and the balance will be delivered in March and April. * * * Miles of track ballasted, in 1909, 881.88; in 1901, 771.43; an increase of 110.45. Second track ballasted: In 1909, 41.13; in 1901, 33.97; an increase of 7.16. In 1909, approximate percentage of timber trestling, creosoted, 81.40 per cent.; in 1901, 61.58 per cent.; an increase of 19.82. In 1909 the approximate percentage of track ties treated, burnettized, was 41.13; in 1901, 31.66; an increase of 9.47. In 1909, track fully tie-plated, 1,171.57 miles; in 1901, 951.73; an increase of 219.84."

Ballast.

Ties.

For the year ending June 30, 1909, we spent $1.453 per mile in maintenance of way, and in 1901, $1,232.14. "In 1901, through California train No. 9, the time from New Orleans to El Paso was 46 hours and 10 minutes, and in 1909 it was 44 hours and 35 minutes; both westbound. The time of the eastbound train in 1901 was 46 hours and 25 minutes from El Paso to New Orleans; and in 1909 it was 46 hours and 45 minutes from El Paso to New Orleans. * * * The time from New Orleans to San Francisco in 1901, was 95 hours and 35 minutes, westbound; in 1909 it was 97 hours and 45 minutes. My understanding is, however, that that train lays over for several hours at Los Angeles, and that it is practicable to make a connection at Los Angeles with a train that leaves for San Francisco sooner; so it is possible to cut out several hours by taking

Through train schedules.

another train at Los Angeles. * * * Eastbound the time is about the same in both years; in 1901 it was 96 hours and 25 minutes, and in 1909, 96 hours and 45 minutes."

(4417) Since I have been in charge of the lines, and reckoning from January 1, 1904, to December 31, 1909, we carried 26,350,990 passengers, which were carried 1,658,794,090 passenger miles, with only one passenger killed in a train accident, 262 injured. The Sunset Limited was a periodical train operated during the winter season. Before it was put on we had experimented unsatisfactorily with, and discontinued, the Montezuma special, a similar train to the City of Mexico, running once a week during the winter season. The Sunset Limited was operated weekly, beginning November 1, 1894, until April 11, 1895, one train a week east, and one west; in 1895 from October 31 till March 16, 1896, semi-weekly, and then until April 16 weekly. (4418) "In 1896 it was operated semi-weekly, commencing on November 9, 1896, and taken off semi-weekly on March 22, 1897, and operated weekly until April 1, 1897. In the season beginning in 1897 the train was not operated from New Orleans, because of yellow fever in the South. * * * In 1898 it was operated semi-weekly from December 1, 1898, to March 27, 1899, and weekly until April 22, 1899. In 1899 it was operated semi-weekly from December 17, 1899, to April 19, 1900. In 1900 it was operated tri-weekly from November 8, 1900, until April 1, 1901; then weekly to April 25, 1901. * * * In 1901 the train was operated again tri-weekly, commencing on December 2, 1901, when it was operated until March 31, 1902, tri-weekly; and then weekly until April 14, 1902. * * *

Accident record.

Sunset Limited.

"The periodical service was not operated any more after April 14, 1902. The following season, however, we very much improved the status of the through train, and we also put on an additional through train to El Paso, which made connection there with the Pacific system. * * * The trains that we call Nos. 9 and 10, the trains that are now operating between New Orleans and San Francisco, were equipped with dining cars and an observation car, as well as the regular sleepers. They had coaches and head-end cars, mail and baggage, also. Since that time, or within the past year, a further improvement has been made in that train, by running electric-lighted cars, equipped also with electric fans, having compartment car also equipped with electric lights and electric fans. I should have said 'observation car' instead of 'compartment car.'* * *But the ordinary sleepers are now equipped with electric lights and electric fans on those two trains. In addition to that train, we run another train with standard Pullman sleepers, through; Nos. 7 and 8. * * * (4419) That double daily service was continued from November 15, 1902, to July 26, 1903; then it was discontinued, and was resumed again on December 16, 1906, and operated until September 1, 1907, when it was again discontinued and to-day we have only a single service through between New Orleans, and San Francisco daily."

Additional through train.

Electric lighted cars.

Nos. 7 and 8.

Additional sleepers at San Antonio.

Since 1907 we found the service adequate to the handling of the passenger business; in the winter months, however, we put on an additional sleeper at San Antonio. A good deal of Pacific Coast travel stops over in San Antonio, and we have been putting on a third sleeper there, running as far as Los Angeles, to take care of that additional travel. The train was generally made up with two head end cars—a day coach or two day coaches—tourist car, two standard sleepers, dining car and observation car. In 1902 or 1903 the Rock Island put on a train called the Golden State Limited, running through from Chicago to Los Angeles, and possibly to San Francisco, via El Paso—very similar to the train we had formerly operated, our Sunset Limited, this Rock Island train operating into and out of California over the S. P. lines. (4420) The Overand Limited of the U. P. runs from Chicago to San Francisco. As to whether those trains are competing, "I should say that a passenger in Chicago, who wanted to go to San Francisco, would have a choice of either train; and in that sense they would be competing."

Golden State Limited.

(4421) My understanding is these trains, their advantages, are advertised, but I have nothing to do with either of them. I do not know what the consist of the Overland Limited is. I don't think the Golden State has as many cars as the Overland Limited—it has electric lights, and an observation and dining car. When the Sunset Limited was first put on it had a composite car—smoking car, barber shop, and cafe; a dining car, and two standard sleepers, later on a third sleeper with an observation end; later on a compartment car was substituted, seven staterooms and a parlor for ladies. It was a very handsome train, lighted with Pintsch gas, but never electric-lighted. (4422) It had no day coaches or tourist cars. Trains 9 and 10, New Orleans to San Francisco, were on at same time with Sunset, carrying a tourist car, two or three times a week, at one time from Chicago over the Illinois Central, once a week, at another time one from Cincinnati, and also from Washington. The tourist car from Washington is still running—I think they are operating three or four cars a week over the Southern Railroad from Washington to Atlanta, over the Atlanta & West Point from Atlanta to Montgomery, thence by the Louisville & Nashville to New Orleans, and thence by our road to San Francisco.

Sunset Limited.

Nos. 9 and 10.

Tourist car from Washington.

(4423) I do not think we run any tourist cars now except the Washington car, except we did run a short time back a tourist car—am not sure whether it is running yet or not, starting locally from New Orleans, but I think not from any point beyond New Orleans; I don't know that the tourist-car service from Chicago was abandoned; the passenger people can tell more about it than I can. I don't think any tourist car is running now from Cincinnati over our line; at one time it moved over the L. & N., and at another time over the O. & C. Route. Within the last year our trains 9 and 10 have had the sleepers and observation car electric-lighted —axle light, storage battery—the dining car practically goes

Tourist service from Chicago and Cincinnati.

through. "There is a night run on that train, each way, between Houston and San Antonio; and for convenience the diner is cut off at Houston and San Antonio; but there is a diner on the train continuously from San Antonio through to destination going west, and also a diner to operate between Houston and New Orleans. In other words there is a diner on it during the daylight hours." Passengers get dining car service all the time both ways, as they used to do, not on the daily trains, but on the Sunset Limited. Diners.

(4424) Trains 7 and 8 had run regularly for many years between New Orleans and San Antonio, and on July 26, 1903, were extended through to El Paso, connecting with a similar train on the Pacific System, and running through sleepers from New Orleans to San Francisco. The through train was up to July 26, 1893, but after that, did not operate any further west than San Antonio, until December 16, 1906, when it was operated as a through train until September 1, 1907. "When the Sunset Limited was first put on, the first season it operated it left San Francisco at 10:30 a. m. and arrived at New Orleans at 7:40 p. m. The hours, as shown by that statement, are 81 hours and 10 minutes. But there is a difference in time between San Francisco and New Orleans of two hours; so the actual time of that train was 79 hours and 10 minutes. In the other direction the actual time was 77 hours and 45 minutes. For the first four or five seasons, or three or four seasons, that was practically the schedule that the train was operated on. Later on, however, the time was shortened. In 1900 the time in one direction was 74 hours and 20 minutes, and in the other direction 72 hours." Trains 7 and 8. Time of Sunset Limited.

That schedule was maintained until the train was discontinued. Present passenger time New Orleans to San Francisco is 97 hours 45 minutes, but the train lays over several hours at Los Angeles, and it is possible to take another train at Los Angeles and get to San Francisco several hours before this train arrives, about 4 hours and 10 minutes. (4425) Westbound, Sunset Limited time was 72 hours, eastbound 74 hours 20 minutes. No. 10's present eastbound time is 96 hours 45 minutes, but it is a daily service; the other was periodical and only a part of the year. We had a daily service at the same time, but the equipment was not as comfortable or convenient as that on the daily service now. We had sleeping cars but no diners or observation cars. We had eating stations, spent and lost a good deal of money on them, probably they did not come up to those on the Santa Fe; they were not satisfactory to us, and they were not satisfactory to the passengers. Time of No. 10.

(4426) Freight service Algiers to El Paso in 1901 was 68 hours 22 minutes, distance 1,194 miles. In 1909 it was 72 hours 19 minutes, Galveston to El Paso. The distance there, the way those freight trains run is 882 miles. We have a regular schedule train, No. 243, running in one or more sections, as the business justifies, and carrying all the freight for El Paso and beyond—of course on the east end of the line we have local trains between local Freight service to El Paso.

No passengers by boat to Galveston.

termini. We still run ships to New Orleans, some of the ships carrying passengers, all of them freight, but we carry no passengers to Galveston. California freight now goes to Galveston. The bulk of the New Orleans freight goes to New Orleans proper, and is distributed into Mississippi, Arkansas and Louisiana. The Algiers docks are practically abandoned, the New Orleans steamers now landing on the east side of the river in New Orleans proper.

(4427) "Occasionally we have a tramp steamer that comes in there and discharges a cargo for some western point at these docks, but we now rent much more convenient docks from the City of New Orleans, on the east side of the river, because of the reason that the bulk of the freight handled in these steamers goes to New Orleans proper, and before it had to be loaded into cars at Algiers and transferred across the river, and it made much slower time than it makes when it is taken right out of the ships and put on the docks ready for delivery at New Orleans proper." Before the Galveston service, California service by Algiers was tri-weekly as a rule, sometimes in the dull summer bi-weekly. It is tri-weekly to Galveston. The ships formerly running to Algiers carried all the New Orleans cargo as well as the California and Texas cargo, but the Galveston ships carry California, Texas, Utah and Colorado cargo, while those to New Orleans carry the New Orleans cargo, which was always a considerable tonnage. I consider that there are five ships a week running now, against three previously. The New Orleans ships now do not take California freight, but the California ships formerly took New Orleans freight. In the old days the California freight was loaded so that it could be unloaded first, so that it would not make any difference in the handling of the freight whether you have a ship entirely for California, Texas and Arizona freight, or whether you have it loaded in the ship so that it will be unloaded first.

Steamers now go to New Orleans proper.

California boat service.

(4428) The number of ships is the same in the sense that formerly there were three ships a week that carried California freight, and that now there are three ships a week that carry California freight. The ships carry freight to Arizona, New Mexico, Texas, some for Oregon, and eastbound carry freight from Texas, copper from Arizona and New Mexico, and California goods. There was a time when they carried sugar from the Sandwich Islands to New York, but that tonnage several years ago was diverted to the Tehuantepec Route, and moves almost entirely by the American-Hawaiian line. The average time of movement, New York to El Paso, given by me as having been shortened by 7½ or 8 hours, was made up from actual movement of the entire freight business westbound, to and beyond El Paso for the times specified—December, 1900, December, 1902, and December, 1909. The average speed of the boats now is faster than in 1901 and 1902, and the Galveston facilities are very complete for the prompt handling of cargoes from ships to rail. In 1902 up to December the docks had only been open a few months; and as the men became more proficient the vessel time averaged

Territory served by boat line.

Time between New York and El Paso.

Galveston docks.

faster—slower time by rail being made up by a faster ship time, greater rapidity in transferring, the superior character of the Galveston terminals and facilities.

Time between Galveston and El Paso.

(4429) Schedule time, 1902, Galveston to El Paso, was 49 hours 50 minutes, card time, including stops—17.8 miles per hour. In 1907, 60 hours 40 minutes, card time, 14½ miles per hour, average actual running time of all those trains in both directions being 17½ miles per hour. Previously I did not give the movement of the other trains, which was probably confusing. The time on the eastbound train was 53 hours 20 minutes, 16½ miles an hour, average running time of the two, 17.6 (4430), exclusive of stops. Eastbound schedule in 1907 was 13.5 miles an hour, due to the fact that our trains are much heavier now, a great many more cars, and it takes a longer time to get them through the terminals and inspect them, etc.

Volume of passenger traffic.

Total number of passengers carried in 1904, 3,702,396; passengers carried one mile 242,522,149. "In 1905, there were 3,680,911 passengers carried. Passengers carried 1 mile, 215,597,861. In 1906 there were 4,570,532 passengers carried; carried 1 mile, 277,631,065. In 1907, number of passengers carried, 4,878,896; carried 1 mile, 314,337,578. 1908, passengers carried, 4,459,810; carried 1 mile, 288,194,961. In 1909, passengers carried, 5,058,445; carried 1 mile, 320,510,476."

(4431) I am not sure about the Chicago tourist car beyond New Orleans having been discontinued; the Washington car is still being operated; I thought the Cincinnati car had been discontinued, but I would not undertake to say positively about that; there are people here more competent to testify about that than I am. I see these tourist cars in the trains, but I don't know where they come from, don't know just exactly where they originate.

NEW YORK CITY, MONDAY, FEBRUARY 28, 1910.

(4431) A. F. BREWER.

Brewer.

Salt Lake. Sup't O. S. L.

Resides in Salt Lake City. Superintendent of the Utah Division, O. S. L. Has been connected with the O. S. L. proper since 1893. Has been closely associated with the General Manager and has come to New York to testify because of the inability of Mr. Bancroft, the General Manager, to attend.

Statement showing physical condition O. S. L.—1899 and 1909.

(4432) Witness produces a statement correctly showing the physical condition of the O. S. L. Railroad on July 1, 1899, as compared with its condition July 1, 1909. It includes branch lines, additional construction, during the period covered by the statement, and auxiliary companies of the O. S. L. controlled by it.

Total expenditures for betterments.

The statement shows a total expenditure by the O. S. L since July 1, 1909, of $20,069,316.29. It represents an expenditure of $11,714,882.61 on the main line of the original property. It represents an expenditure of $331,390.68 on the branch lines of the original property. It represents an expenditure of $355,351.75 for additions to the original property. It represents an expenditure of $5,626,702.41 for auxiliary branch lines, and an

expenditure of $2,040,988.84 for lines under construction. The last amount given includes moneys actually expended, and does not include estimated cost. The statement also includes certain lines of railroad constructed by the O. S. L. between July 1, 1899 and June 30, 1909, and disposed of during the same period. The statement is marked Defendants' Exhibit 211 and is set out on pages 4433 to 4443.

Expenditures, June 30 to Dec. 31, 1909.

(4443) Witness has prepared a statement, Defendants' Exhibit 212 showing mileage and estimated cost of sidetracks and second track built, authorized, and proposed for the period June 30 to December 31, 1909. It shows a total estimated cost of sidetracks of $746,088 and of second track of $666,286. (4444) Witness has also prepared a statement, Defendants' Exhibit 213, showing the amount of business handled by the O. S. L. between the years 1900 and 1909, inclusive, giving the tons per train, all freight; tons one mile, all freight; and passengers one mile. It shows in 1901, tons per train, all freight, to have been 390.64; for 1909, 569.61; tons one mile, all freight, for 1901, 990,570,383; for 1909, 1,495,759,248; passengers one mile for 1901, 71,426,735; for 1909, 165,591,504. Witness produces protographs of passenger depots erected by the O. S. L. during the period covered by Exhibit 211. Defendants' Exhibit 214 is a photograph of the freight depot at Salt Lake City. Defendants' Exhibits 215 and 216 are interior views of the passenger station at Salt Lake City. Defendants' Exhibit 217 is a photograph of the passenger depot at Boise, Idaho. Defendants' Exhibits 218 and 219 are photographs of the passenger depots at Nampa, Idaho. Defendants' Exhibit 220 is a photograph of the passenger depot at Caldwell, Idaho. Defendants' Exhibit 221 is a photograph of the passenger depot at Payette, Idaho.

Volume of freight traffic —1901 and 1909.

Photographs of depots.

Witness also produces the following additional photographs: Defendants' Exhibit 223 is a photograph of San Ridge cut-off, which is a shortening of the line into the Ogden union depot, affording a better entrance. Defendants' Exhibit 224 is a photograph of the Weber River bridge, in the same cut-off, located one mile south of Ogden. Defendants' Exhibit 225 is a view of block signals at a point approaching McCammon, Idaho. Defendants' Exhibit 226 is a photograph of ice-houses at Pocatello, Idaho. (4445) Defendants' Exhibit 227 is a photograph of the yards at Pocatello, Idaho. Defendants' Exhibit 228 is a photograph giving a view entering Beaver Canyon. The main line of the O. S. L. runs from Granger, Wyoming, to Huntington, Oregon. It also has a line beginning at Salt Lake City, passing through Ogden, intersecting the main line at Pocatello, and running up to Silver Bow, Montana. Silver Bow is about 4 miles south of Butte. The O. S. L. gets into Butte over the N. P. tracks, under a trackage lease. O. S. L. trains run right into Butte. Butte is the terminus of the line. The line, Sandy to McCammon, is just south of Salt Lake. It serves all the smelters in what is called the Utah Valley.

Various photographic views of O. S. L.

Description of O. S. L. lines.

McCammon is in Idaho, between Ogden and Pocatello, you might say. You really strike the main line at McCammon.

(4446) The miscellaneous structures referred to in Defendants' Exhibit 211 include all small buildings and structures that were not specially listed in another portion of the Exhibit, and covers section houses, small shop plants, etc. "Q. I notice that on page 9 you list 'Station Building,' and 'Water and Fuel Stations.' A. Yes, but there is very little reference made in this itemized list, to special structures, outside of one or two station buildings and the shop at Pocatello." The construction of the buildings has extended over a period of 10 years, and averages about $40,000.00 a year. Logan Junction is just north of Cache Junction. If you went from Ogden to Pocatello you would pass Cache Junction, and branch off to the north and east from Cache Junction; Logan Junction is a point just above Cache Junction. The line from Mendon to Logan Junction was built to serve a couple of small towns in there; Hyrum and Wellsville. That is in Utah. The Wood River branch extends north from Shoshone, Idaho, to Ketchum. That was built prior to 1890. It is one of the old branches. It was put into the statement on page 13, under the head of "New Branch Lines," because of a little addition, a mile and a fraction, involving the expenditure of $2,900.00.

Buildings.

Branch lines.

(4447) The Boise branch is also an old branch, and is shown on that statement because of the fact that the main track had been changed from 52 lb. steel to 60 lb. That change was made along about 1903 or 1904. Traffic on that branch is principally passenger traffic. Boise is the capital city of Idaho. (4448) Witness thinks Wallace is a larger town. Boise is the largest town in southern Idaho; is a jobbing point and is about 22 miles from Nampa, Nampa being on the main line to Huntington. The new construction between Brigham to Corrine, a little less than 4 miles, was built to make a connection between the S. P. and the main line of the Short Line. (4449) The North Kemmerer branch is in Wyoming in the coal fields. There is a big coal traffic out of there. The greater portion of the coal from that region is consumed in Idaho, some of it in Oregon and Washington. The greater tonnage from those mines is used by the O. S. L. for its locomotives, and by the O. R. & N. for the same purpose; that is, speaking of the Cumberland mine proprty. The Diamondville mine output goes to the Amalgamated Smelters at Anaconda. The branch line from Idaho Falls to St. Anthony was built in 1900, and the other two lines under the head of "St. Anthony R. R." are branches of that line.

Coal traffic.

Witness thinks that the Wyoming Western from Moyer Junction to Cumberland was about two years under construction. Moyer Junction is on the main line between Huntington and Granger, 42.3 miles west of Granger. (4450) The construction of the Salmon River R. R. was finished June 30, 1902, and was begun about three years prior to that date. That railroad extends from Black-

Branch lines.

foot, Idaho, just north of Pocatello, to the town of Mackay, headed toward Salmon City in Idaho, a distance of 85 miles, at a cost of a little over $880,000. Yellowstone Park R. R., built from 1906 to 1909, and 70 miles long, at a cost of something over $2,161,000, was built principally for tourist travel into the Park. The Northern Pacific and the Oregon Short Line both serve the Yellowstone Park. The travel is principally tourist travel from the east. The 70 miles is the mileage from St. Anthony. The line is 107.6 miles long from Idaho Falls.

Yellowstone Park line.

Branch lines.

The Malheur Valley Railway, 14 miles long, is in eastern Oregon. It runs through an agricultural country and extends up to the little town of Vale. The line was finished in the year ending June 30, 1907, and was only a little over a year in construction. (4451) The Northwestern Railroad is a line that is being constructed along the Snake River from the town of Blakes, just east of Huntington, towards Lewiston, Idaho. It follows the river pretty closely all the way. "Q. Your line runs along the Snake River now, doesn't it? A. Yes." This line is stated to be 41.54 miles long and to have cost a little under 2 million dollars, and has been under construction about 3½ years. The amount of $1,992,000, includes all that had been spent up to the time the statement was prepared. The line is just about half built. It is projected to give entrance to Lewiston. Lewiston is now reached by the water lines principally. Witness does not know but what the N. P. gets in there. Minidoka & Southwestern is a little spur that is out from the Twin Falls branch. It was under construction at that time. The Minidoka & Southwestern branch was completed from Minidoka to Twin Falls or to Buhl. (4452) Defendants' Exhibit 212 includes the item "Mileage and Estimated Cost of Side Tracks and Second Track, built, authorized and proposed," and aggregates, sidetracks, $746,088, but of that only $195,000 worth has been built. The total amount shown opposite the heading "Second Track" is $666,286. Of that $139,000 has actually been spent. Under the head of "Authority Requested but not yet approved," the sidetracks in round figures, amount to $416,000, out of $746,000. "You see $134,000 has been authorized. $195,000 has already been spent on sidetracks; and requested but not yet approved $416,837." The number of miles of second track built is 7.84; $139,387. Authorized but not constructed, estimated cost $246,000. Authority requested but not yet approved, $280,854, out of a total of $666,000.

Line to Lewiston.

Minidoka & S. W.

Amounts expended and authorized.

"Q. Then, out of this grand total, which aggregates about $1,400,000 in the two items, there is about $700,000 that may never be spent at all, as the request for authority to expend it has not been approved? A. I do not think there will be any question but what the authority will be received and it will be spent; it is an absolute necessity in fact, that they do it." From 1901 to 1909 the tons one mile, all freight, increased from 990,000,000 (in round figures) to 1,495,000,000, which is almost exactly 50 per cent.; (4453) and the passengers one mile increased from 71,000,000 to 165,000,000,

Increase in freight traffic.

which, in round figures, is 125 per cent. The tons per train all freight increased, from 1901 to 1909, from 390.64 to 569.61. Notwithstanding the heavier loading of the trains, the larger amount of freight that moved in 1909 is not hauled in less trains than it took to haul that freight in 1901. There was only one scheduled freight train each way in 1901. Heavier trains.

Additional traffic, whenever necessary, is carried in one or two sections. The freight train schedule in 1901 up to the present time has been almost stationary; that is, it has averaged about 41 hours from Green River to Huntington or 38 hours from Granger to Huntington; as witness recollects, about 13 miles an hour, then; and it is practically the same today. The schedule at the present time is about 38 hours and 35 minutes. Witness looked over the schedules just before he left Salt Lake. "We had a file of them there. They ran along very uniformly, about 41 hours from Green River to Huntington, in the last 10 years." (4454) Sometimes they go up to 42 hours, or back to 39 hours and one-half; hung around about 41 hours, there on the through schedule, all during the period of 10 years. The O. S. L. handles over the U. P. traffic to Butte originating east of the Missouri River. "Q. There is quite a traffic in there, isn't there? A. Not very heavy for us, no sir." It is mostly moved by the Northern lines. The O. S. L. has not a considerable traffic out of Butte—the copper does not run over three to five cars a week; 50-ton cars. The Northern lines get most of that. Freight train schedules. Butte traffic.

(4454) G. F. RICHARDSON. Richardson.

I am and have been Superintendent of Transportation of the S. P. since 1895. Speaking of the freight movement from Omaha to San Francisco based on 168 cars, referred to in the record, we took what we considered a representative number of cars, and followed the time made by them from Omaha to San Francisco, under a system that we have for following the movement of through freight, known as the manifest system. (4455) I asked a clerk in my office to give me the time made by about a hundred cars during a certain period, and he gave me the record of those particular 168 cars, not representing the entire San Francisco freight, but simply those cars. He had no instructions to select any particular cars, and didn't even know for what purpose the information was wanted. San Francisco. Sup't Transportation, S. P. 168 cars, as basis of train movement.

In 1900 we had one through passenger train daily in addition to the Sunset Limited; this daily train consisted of the usual head-end cars, coaches, sleepers, and tourist cars, without any diner or observation car. In 1902, after the discontinuance of the Sunset Limited, there was a second daily through train put on, which has run more or less continuously ever since, substantially like the other one. We have a daily train from New Orleans to San Antonio, and in addition to that a daily train between El Paso and San Francisco. Also a through train between New Orleans and San Francisco. In 1902 the Golden State Limited was put on. The Train service on Sunset route.

through train, New Orleans to San Francisco, was equipped with diner and observation car in 1902, when the Sunset Limited was withdrawn.

(4456) In addition to the through train between New Orleans and San Francisco, there was another passenger train operated from New Orleans west, which in 1902 went through to San Francisco. (4457) A part of the time it was two trains, and part of the time one train. Between 1900 and the present time we have been operating a train between New Orleans and San Antonio, and also a train between El Paso and San Francisco; and over and above that train service, we have been operating, since the discontinuance of the Sunset Limited in 1902, a through train all the way from New Orleans to San Francisco. The train put on in connection with the Rock Island in the fall of 1902 ran until May 1, 1903, resumed in December, until April, 1904, resumed in December of that year again, and has run continuously ever since—consisting of a mail car, baggage car, diner, sleepers, and observation car. In addition, we have another train, put on in Jaunary, 1910, making a Rock Island connection at El Paso, running between that point and Los Angeles, and consisting of a mail car, baggage car, chair car, diner, sleeper, and tourist cars. As against this, the train service in 1900 consisted of one through train, and the Sunset Limited.

Train service on Ogden route.

(4458) In 1900 there were three daily through trains in each direction between San Francisco and Ogden. There are four now, with improved equipment, chiefly by the addition of dining cars and observation cars, and installation of electric lights. The schedule of the Overland Limited westbound, Ogden to San Francisco in 1900 was 28 hours 30 minutes, now it is 28 hours 18 minutes; eastbound in 1900 it was 28 hours 45 minutes, and now 26 hours 30 minutes. In 1900 we had two daily through trains between San Francisco and Portland, one of them equipped with mail car, baggage car, coaches, tourist cars, and sleepers; the other had, besides, a dining car. (4459) The schedule of these trains was about 36 hours each way. Now we have three daily trains each way, all equipped with diners, one of them having an observation car, which none of the earlier trains had, and which is electric-lighted throughout, its schedule being 27 hours 30 minutes.

Time, New York to San Francisco, Sunset route.

Average time of through freight New York to San Francisco by Sunset Route, in 1900, was 15 days and 7 hours, and in 1909, 15 days 5 hours. The first figure is based on the movement of 15 cargoes during different months, February to October, 1900, and the second figure on the movement of all cargoes during May, June and July, 1909. The records of my office during the first period were destroyed, and I had recourse to the records of our agent at San Francisco, which had been saved, showing the departure of the cargoes at New York, and the arrival of the freight in cars at San Francisco; for the latter period my own records were available and used. (4460) I simply asked the agent to give me his record of a sufficient number of cars to indicate the performance, just as I

did in the case of the 168 Ogden cars. Eastbound Sunset freight is manifested. "We have a system known as the manifest system, whereby we follow the movement of through freight on various lines. It is reported by wire, time of departure from initial point, time of passing various designated points en route, and the time of arrival at destination; that includes the arrival of the trains at Galveston, the departure of the ships from that point, and their arrival at New York."

Manifest system.

Practically all commodities are manifested by the Sunset line. The system was in use prior to 1901, but I made a trip throughout the East in that year, looking into similar systems on other lines, and revised ours to embody the desirable features, and we improved somewhat upon our former methods, securing more regularity in the movement of the freight. The improvement was principally in changes in the blank forms used in connection with it, we also multiplied the number of points at which the passing of cars is reported, we also had distinctive forms for reporting where cars are set out for any reason, so that they will be picked up as early as possible and avoid any delay in that way. It is difficult to explain very much in detail. (4461) At the present time the average time of through freight Los Angeles to New York, Sunset, is about 15 days—a trifle less. We took the actual time consumed by 200 cars, without special selection, from their departure from Los Angeles until arrival of steamer at New York dock.

Time, Los Angeles to New York, Sunset.

In 1900 the Sunset went from San Francisco to Los Angeles by the Valley line, by the San Joaquin Valley and Bakersfield, crossing the Tehachapi Mountains by way of Bakersfield and Los Angeles. In 1901 another Sunset line between San Francisco and Los Angeles was opened, known as the Coast Line, running down the coast from San Francisco to Los Angeles by way of Santa Barbara, through the Santa Clara and Salinas valleys, where it is practically a level line, then a very short but rather steep grade from Santa Margarita, and from there to Los Angeles it is a line of very much more favorable grades than the Tehachapi line, a line of much less resistance than the Valley line for moving freight, and the use of the Coast Line has improved the freight service by the Sunset very much. (4462) It enables us with the more favorable grade to handle freight in large lots, promoting the regularity of the service, and avoids the troublesome water transfer from Oakland to San Francisco. Valley line freight cars must be ferried across San Francisco Bay, but the Coast route enters the city direct by rail, without water transfer.

Change in Sunset line through California.

Dumbarton cut-off will enable us—it is 20 miles south from San Francisco across the arm of the bay—to move a good deal of freight for local points in the San Joaquin Valley, and also freight in the direction of Ogden and Portland. Sunset freight moving through the San Joaquin Valley could be handled into San Francisco over this cut-off. We have a manifest system on the Ogden line, first put in use in 1896, but modified somewhat in 1902, the form

Dumbarton Cut-off.

Manifest system—Ogden line.

not being precisely the same as on the Sunset. (4463) The same form of improved manifest system was applied in 1902 on both S. P. lines, Ogden and Sunset, and was extended to Omaha in the fall of 1904. By actual movement, taken from our records, we found the average time of a representative number of cars Omaha to San Francisco moving in May, June and July, 1909, to be 9 days and 3 hours. I simply instructed the clerk to take off the record of 100 or more cars, and give the time made by them from Omaha to San Francisco. This figure is based on the movement of 168 cars as described a little while ago. (4464) The present time of the westbound through train between San Francisco and New Orleans is 97 hours 45 minutes, eastbound 96 hours 45 minutes. This is an extra night as compared with what the Sunset Limited was, but the present train is a daily one.

Time, Omaha to San Francisco.

(4465) I do not think that washouts were more frequent on the coast line, or delayed traffic more by that line, than by some other. (4466) We have started a train by that line, and it had trouble from a washout after it started, which could not be foreseen, and the train was brought back and sent down the other way, and perhaps in that way consumed two days in reaching Los Angeles. It is true that regularity of movement of coast line freight has been much interfered with during the winter season by floods every year, and the same is true of other lines; there has been a great deal of trouble from washouts on the San Joaquin Valley line. The Coast Line was opened in the fall of 1900, and was closed entirely for a short time after on account of washouts and other trouble, but I am speaking of its permanent opening in the fall of 1901. (4467) It is possible that line has suffered more from the fact that it has had much more frequent train service and a greater number of trains have been affected.

Washouts on Coast line.

The schedule freight train time on New York traffic between El Paso and San Francisco is, I think, about five days. The Rock Island connection by way of El Paso, put on in January, 1900, consisted of a mail car, one way, baggage car, chair car, diner, sleeper, and tourist cars. (4468) There are two sleepers, one I think from Chicago, and one from Kansas City. The Golden State Limited carries tourist cars during the summer months, whether from Chicago or some other point I can't say. The new train put on in January, 1910, hauls two tourist cars daily to Los Angeles. The tourist car on the New Orleans train westbound runs to San Francisco. (4469) The present time of the Overland from Ogden to San Francisco is 28 hours 18 minutes, and the other way 26 hours and 30 minutes. In 1900 the time Ogden to San Francisco was 28 hours 18 minutes, and the other way 28 hours 45 minutes. We have numbers 9 and 10; I believe it is called the China and Japan Fast Mail, running between Ogden and San Francisco.

Time between El Paso and San Francisco.

Consist of Golden State Limited.

Time of Overland.

(4470) All the 168 representative cars selected are westbound, Council Bluffs to San Francisco. (4471) Under the manifest system there are a certain number of cars on each man-

ifest. The clerk took these records from those manifests and would naturally take whatever cars appeared on the manifest —may run anywhere from 1 to 20. On May 1st two cars left Council Bluffs at 8:30 p. m., one of them being 11 days 8 hours to San Francisco, and the other 8 days 18 hours. This is quite natural, no doubt some accident to the car that was longest on the road, and perhaps it was set out for repairs. Four cars got through in 8 days 20 hours, one in 9 days 16 hours, one in 9 days 19 hours, one in 9 days 13 hours, one in 7 days 11 hours, and the two I have just spoken of. Including the car that was perhaps set out for repairs, I don't think there is anything unusual about that showing, or anything extraordinary, considering the length of the run. In June, the clerk seems to have started with the first, and run up several cars a day to the 8th outside of the 4th, when there were no cars; one car on the 12th, and one on the 19th; no more that month. This was probably for the reason I stated, that he took whatever was on certain manifests. A car moving on the 8th would not ordinarily be on the same manifest as one moving the 19th, though it might be a part of the way. If the first car had been set out, or delayed from any cause, the second one might have been added to it. Movement of the 168 cars.

(4472) Where the last car, however, on the 8th, made the run in 8 days 19 hours, it would have arrived before the 19th and the manifest would not have been added to. The schedule of through freight asked for from El Paso to San Francisco is 109 hours 15 minutes; very little New York business moves on that—very little of it in regular numbered trains; most of it moves in extra trains; local traffic moves more or less in this train. The new Portland train of June, 1909, has a pretty good business. I think the other train still does a good business. The traffic warranted the third train. (4473) The distance between Portland and San Francisco is about 750 miles. The schedule for fruit trains Los Angeles to Sparks is 50 hours, Sparks to Ogden 40 hours. The time Omaha to Chicago is 26 hours; the total time, Los Angeles to Chicago, includes transfers U. P. to S. P. at Ogden, and U. P. to Northwestern at Omaha. New Portland train.

Fruit train schedule.

(4474) To the best of my recollection, the schedule, Los Angeles to Chicago, has been about 8 days or a little more for several years, the shippers being satisfied with the schedule. (4475) Colton is 60 miles out of Los Angeles, near the center of the fruit district, and 755 miles from El Paso, the fruit train time being nearly 12 miles an hour. We exchange that business at El Paso with the Rock Island and Texas Pacific. The average time New York to San Francisco, February to October, 1900, by the Sunset was I belive 15 days 7 hours, and for May, June and July, 1909, 15 days 5 hours. (4476) The data upon which the figures 15 days 7 hours New York to San Francisco in 1900, were made up, show the day of the month on which the steamers left New York, and on which the cars arrived in San Francisco. It does not appear from the San Fran- Time, New York to San Francisco, Sunset.

cisco agent's memorandum, what the hour was of leaving or arriving. On the first page of the movement for 1909 is the detail, steamer "El Mar" New York, February 10, 1909; 16 cars out of that steamer arrived on the 24th, 2 cars on the 25th, and the average time is given as 14 days. I have the details of that statement, which gives the actual time for all the cargoes, and upon which is based the figure of 15 days and 5 hours, not upon the first memorandum or detail.

(4477) The hour of the day of arriving in San Francisco is not shown. The statement averages 15 days 5 hours. It could not be very far wrong, it could be several hours. The first page of that schedule shows that out of 34 carloads 27 arrived in San Francisco behind time. The detail shows the entire movement of San Francisco freight during the three months. (4478) This is not the ultimate detail. I have not the ultimate detail with me, did not make it up myself. There is very little difference, comparatively none, in the distance El Paso to San Francisco by the Tehachapi and by the Coast Line—about 2 miles only. We can handle freight over the Coast Line in larger trains, larger lots, with more regularity of movement, and more economically. (4479) The Dumbarton cut-off, now being built, was commenced about three years ago. Under ordinary circumstances Sunset traffic will continue to move over the Coast Line. The Dumbarton cut-off will to a great extent remove the necessity of ferrying across the Bay, which has to be borne by the Railroad Company, and the cut-off will be an economy in that respect. The Overland Limited was first electric-lighted in April, 1902. Some trains east of the Missouri River had been so lighted a long time before that, and I presume a great many west of Chicago, between St. Paul and Chicago.

Relative distance—Coast and Valley lines.

Dumbarton Cut-off avoids the ferry.

(4480) In the last six or seven years electric lighting is in much more general use than formerly, served in many cases, by power from the axle. All the Overland trains are not electric-lighted; our Overland trains. The Golden State Limited is electric-lighted, and I think the Santa Fe Limited. It is customary now to run dining cars on all the roads in this country. We took off the car having buffet smoker, barber shop, and bathroom, on Overland Limited, but substituted another car that our people thought more popular with the patrons of the train. (4481) We ran a compartment car on the Overland Limited, a car all compartments, but we do not run that car now. As to the manifest system, "the numbers and initials of cars are noted on a blank form and reported to my office by wire from the initial point of a train. There is also given to the manifest itself a number. Thereafter at certain designated points passed by the train, the time of passing is reported by wire by reference to the manifest number only, so long as all of the cars are intact and moving. If any car has been set out for any reason, repairs or anything of that kind, that is also noted, and orders given to pick it up, and when it is picked up it is again reported as showing the delay it suf-

Electric lighting.

Buffet car.

Manifest system.

fered and the time it left the point, and the arrival at destination is reported in the same manner. That is a very brief outline of it."

I don't know that I should say that the manifest system is quite common on the Western roads; two or three roads west of the Missouri River besides our own make use of the system. We do not operate altogether under the same classification as the U. P. (4482) We have a list of commodities, aside from packing house products or fruit, included under "For Preferred Attention." It is not quite as extensive, I think, as the U. P. list. We make a distinction between dead freight and livestock and perishables. We sometimes move both classes of freight—perishables and dead freight—in the same train when there is not enough of the perishable freight to make a train; if there is, it is run separately. Where you have full trains of perishable freight, the preferred attention results in a substantial saving of time. The perishable freight moves on the fruit train schedule, and we make it most of the time.

Dead freight — live stock and perishables.

(4483) I gave the time of the through freight movement to San Francisco for a specific number of cars only, as an average, for all classes of freight outside of fruit and packing house products and things of that sort. The detail in respect to cargoes indicates the time when the cargo leaves, and when the cargo arrives, so that substantially the time is shown for which the freight composing that cargo is in movement betwen origin and destination, and that is shown for 1900 and 1909. When we first attempted to open the Coast Line we had some trouble with washouts and other conditions. The line was afterwards strengthened very materially, and since that time we have had no more trouble with washouts on that line than on any other line, and the bulk of the Sunset freight and passenger travel moved and for years has moved over the Coast Line. I stated that I had not a detail of the 200 cars Los Angeles to New York. (4484) The movement of cars Los Angeles to New York by the Sunset depends somewhat on whether they reach Galveston in time to catch a ship, and if they arrive just in time the movement is faster. In making up this average movement of 15 days Los Angeles to New York, cars that were more than 15 days, and cars less than 15 days—depending on whether they caught the ship—were put in and a general average taken.

Coast line.

Movement of cars Los Angeles to New York

(4484) R. B. MILLER (2).

Miller.

I live in Portland, Oregon; am Traffic Manager of the O. R. & N. and Oregon-Washington Railroad, and General Freight Agent of the S. P. Lines in Oregon; have been General Freight Agent of the S. P. Lines in Oregon since 1905, and also since that time, of the O. R. & N., having previously been in the Traffic Department of the O. R. & N., where I began as a boy in 1886. (4485) During 1899, 1900 and 1901 the O. R. & N. operated four boats at different times on the Willamette River, two concurrently, sometimes three. The freight capacity of the "Ruth" was 175 tons, "Modoc" 160 tons, "Elmore" 200 tons, and the "Gypsy," which sank July 11, 1900, 75

Traffic manager O. R. & N.

Willamette river boats.

Points served.

tons. The draft of the Ruth, Modoc, and Elmore was from four to five feet loaded, of the Gypsy very much less. The river points served both by these boats and the S. P. were Oregon City, New Era, Salem, Independence, Albany, and Corvallis. Other points served by the boats are not served by the S. P.—it does not take the business—but the traffic might, and probably would be delivered to the S. P. if no boats were operated. These other points are Butteville, Cane Landing, Champoog, Gearing Landing, Herris Landing, Newburg, Reeds Landing, Wilsonville, Wheatland. Oregon City is 15 miles south of Portland, New Era 21 miles, Salem 57 miles, Independence 76 miles, Albany 80, Corvallis 97. Harrisburg is 110 miles by rail from Portland. Boats have not gone to Harrisburg since 1896.

River shallow.

(4486) At times the river is so shoal that the boats are not able to get above Salem, in fact, they get above Salem only during the winter and spring months, from November 1st or sometimes 15th to June 1st, sometimes July 1st. The boats take some local business to and from Portland, as well as business through Portland. During 1899, 1900 and 1901, besides this boat service there was boat service maintained by the Oregon City Transportation Company. Hops were produced along the Willamette River at the points I mention in 1899, 1900 and 1901—about 10 per cent. of the total hops of the Willamette Valley crop are shipped by Willamette River boat, the other 90 per cent. being local to the S. P. The river boats carry practically no wool. From 1899 or 1900 to 1904 these river boats operated at a loss. For the fiscal year ending June 30, 1900, the Willamette River steamers of the O. R. & N. had a deficit of $6,008.43; for 1901 there was a deficit of $15,465.37; in 1902, of $26,413.02; for 1903, of $30,221.87, and in 1904, of $37,062.05. These river boats have been operated below Oregon City since 1904, between Portland and Oregon City. (4487) The boats discontinued going above the mouth of the Yamhill River in 1904. Oregon City is 15 miles from Portland. The river runs north, when I say "below" I mean Oregon City. During 1899, 1900, and 1901, two of the four steamers of the O. R. & N. operated at one time; sometimes three. The Gypsy was used as a wild boat, operating when the water was very low on the upper river. As a matter of practical operation, we were running two regular boats during any given interval of time. The general character of the freight by steamer from Portland to San Francisco was grain, potatoes, and box shooks, originating respectively in O. R. & N. territory, on the Willamette River and at points south of Portland, and locally at Portland, the return freight being general merchandise distributed locally through Portland to points in Eastern Oregon, Washington and Idaho, and points south of Portland. (4488) During 1899, 1900 and 1901, the sailings of the two steamers between Portland and San Francisco were every five days. There had been steamer service between Portland and San Francisco as far back as 1849. This local stuff was taken down by the steamers to

Other boat service.

10% of hops carried by river boats. No wool.

Operated at a loss.

Number of boats used.

Freight from Portland to San Francisco.

Steamer service.

San Francisco, and the merchandise brought back to Portland and distributed out for a great many years. The time of service is about 60 hours from port to port. Rail service began between Portland and San Francisco in 1887. During 1899, 1900 and 1901 the time of this freight service by rail was five, six, seven days, the freight being handled on way trains.

Rail service.

During 1899, 1900 and 1901, the gross earnings for the ocean steamers Portland-San Francisco were as follows: Fiscal year ending June 30, 1899, $359,393.06; a deficit of $3,872.87. Year ending June 30, 1900, gross earnings $447,690.68, surplus $59,629.69. Year 1901, gross earnings $457,575.17, surplus $20,233.44. The ratio for those three years of operating expenses excluding taxes, to gross earnings was, 1899, 101 per cent.; 1900, 86 per cent.; 1901, 95 per cent. "The local tonnage carried between Portland and San Francisco was as follows: For the fiscal year ending June 30, 1899, northbound 38,944 tons; southbound 46,794; total 85,738. 1900, northbound, 48,834 tons; southbound 37,302; total, 86,136. 1901, northbound, 44,724 tons; southbound, 31,976 tons; total 76,700 tons. * * * (4489) The earnings: 1899, northbound, $112,768.98; southbound, $117,826.01; total, $230,594.99. 1900 northbound, $139,058.19; southbound, $100,600.99; total, $239,659.18. 1901, northbound, $131,860; southbound, $85,190.55; total, $217,050.55." The carload tonnage and gross earnings of the rail lines of the O. R. & N. were: "1899, 1,375,737 tons; earnings, $6,258,282.33. 1900, 1,506,265 tons; earnings, $6,683,114.85. 1901, 1,843,833 tons; earnings, $7,542,954.75."

Earnings of ocean steamers.

Local tonnage.

Earnings.

Tonnage and earnings of O. R. & N. rail lines.

The carload movement by rail—taken on way trains—between San Francisco and Portland during 1899, 1900 and 1901, would be substantially the same as in 1898. The actual figures for the first three years mentioned are not available, because of the destruction of the S. P. records in the fire of 1906, and because the Portland office records are not available for those years. For 1898 the carload movement San Francisco to Portland was 144 cars, and the southbound movement substantially the same. Of those 144 cars, 84 were tin cans in bulk for delivery on S. P. tracks in East Portland, and 36 were sugar for delivery in warehouses on S. P. tracks in Portland. Tin cans in bulk were not desirable freight, and it was not practicable to carry them on an ocean steamer. The northbound carload movement San Francisco to Portland for 1908 was 640 cars, of which 289 were scrap iron, the shipments being abnormal, due to the San Francisco fire. This was business having destination at Portland and East Portland.

Carload movement by rail—San Francisco and Portland.

A steam schooner is propelled by steam, it has sails also, is somewhat smaller than a steamship, and equipped for carrying freight more particularly than passengers. During 1899, 1900 and 1901, steam schooners were plying between San Francisco and Portland, engaged largely in transporting lumber southbound, although some of them took other cargo; northbound they took such cargo as they could get, in preference to ballast. In addition to lumber, south-

Steam schooners.

bound, they carried grain principally, some box shooks, possibly some potatoes. During the same years, water crafts were plying between Puget Sound and San Francisco, carrying substantially the same character of freight as between San Francisco and Portland—first-class steamships operated by the Pacific Coast Steamship Company, and steam schooners like those between San Francisco and Portland.

Puget Sound lines a factor in rate making.

(4491) This Puget Sound water transportation was a factor in the San Francisco-Portland rates by water. "It was not practicable to charge any higher rate between San Francisco and Portland than was charged by the steamers betwen San Francisco and the Puget Sound ports, without handicapping the Portland merchants as against the Puget Sound merchants (particularly Tacoma and Seattle) in the distribution of goods of California origin or production, at points in eastern Oregon, Washington and Idaho. And in the opposite direction, it was not practicable to get any higher rate on grain from Portland to San Francisco than in effect from Puget Sound to San Francisco, without causing a diversion of the grain to the Northern Pacific in eastern Washington and parts of eastern Oregon for shipment via Puget Sound. * * * If the rate from Portland had been higher than from Puget Sound, the business would move through Puget Sound ports."

Lumber movement.

Lumber and other traffic moved from Portland to points on and beyond the D. & R. G. in 1900. As to the movemnt of lumber via Huntington to Ogden and Salt Lake, it was, from Portland: "The movement of lumber from Portland via Huntington was as follows: In 1899, to Ogden, 702 tons; Salt Lake, 3,506 tons. 1900, Ogden, 632 tons; Salt Lake, 5,925 tons. 1901, Ogden, 1,510 tons; Salt Lake, 9,379 tons. * * * Freight other than lumber: 1899, to Ogden, 101 tons; Salt Lake, 455. 1900, Ogden, 98 tons; Salt Lake, 591. 1901, Ogden, 108 tons; Salt Lake, 176. * * * I have the revenue. On lumber, Union Pacific system revenue (that is to say, the revenue from Portland to Ogden and Salt Lake, as the case might be) was as follows: 1899, to Ogden, $5,070.52; Salt Lake, $26,183.22. 1900, Ogden, $4,345.71; Salt Lake, $44,222.81. 1901, Ogden, $11,752.98; Salt Lake, $66,808.39."

Freight other than lumber.

(4492) On freight other than lumber the U. P. System revenue for 1899 was, to Ogden, $960.34; to Salt Lake, $4,048.46; 1900, Ogden, $778.51, Salt Lake, $4,932.38; 1901, Ogden, $1,531.39, Salt Lake, $2,692.62. No lumber or other freight in any appreciable quantity moved to Ogden or Salt Lake from Portland by the roundabout route through Roseville. There was some movement in lumber or other traffic from Portland via Roseville to points on and via the D. & R. G. and its connections, but I don't think it ever amounted to much. As to the lumber rate from Hood River, referred to in the record, I am familiar with the circumstances.

Lumber via Roseville to D. & R. G. points.

Hood river lumber rate.

"On October 21, 1905, the O. R. & N. Company published a rate of 40 cents per 100 pounds on lumber from Portland and certain Southern Pacific points in Oregon to Umbria and Lucin, Utah,

which was the same rate as applied via Shasta or Roseville route. On January 17, 1907, the O. R. & N. published a rate of 40 cents per 100 pounds on lumber from Portland only, that is to say, not from points south of Portland, to Palisade, Nevada, which was the same as applied via the Shasta route. The tariffs carried the long and short haul clause, and therefore applied as a maximum from and to intermediate points. Hood River is a point 66 miles east of Portland, and, being intermediate, the Portland rate was not exceeded from that point. The rates were originally established largely for the purpose of assisting in the movement of the traffic owing to the conditions that existed on the Southern Pacific lines at that time. * * *

"The rate to Palisade was canceled October 10, 1907, and to Umbria and Lucin on July 31, 1907. Now, Lucin is a point on the Southern Pacific lines 102 miles west of Ogden. Umbria is a point on the Southern Pacific lines 104 miles west of Ogden. Palisade is a point on the Southern Pacific lines 259 miles west of Ogden. Now, the rate which was applied from Portland to these points was the same as applied to Ogden, notwithstanding the fact that the distance to Lucin, Umbria and Palisade was considerably greater than to Ogden. Out of the 40-cent rate to the points in question, it was necessary to allow the Southern Pacific Company something for its service west of Ogden. It seemed to (4493) me quite objectionable to permanently continue carrying the Ogden rate to a point west of Ogden for the additional distance. Therefore the rates were canceled; the Southern Pacific in the meantime having been in better position to take care of the traffic over its own lines. * * * When the rates from Portland were withdrawn we established a special rate of 5 cents per 100 pounds from Hood River to Portland for the benefit of the mills at Hood River, the local rate at that time being, I think, practically 10 cents per 100 pounds from Hood River to Portland."

Carload movement from the east to Portland.

As to the approximate carload movement from eastern points to Portland: "In 1898 the movement via Ogden and Roseville was 298 cars, while the total movement via all lines to Portland was 4,214 cars. Southern Pacific percentage via Ogden and Roseville 7 per cent. In 1899 the movement was 251 cars via Ogden and Roseville, and 4,400 cars via all lines; Southern Pacific percentage via Ogden and Roseville 6 per cent. In 1900 the movement via Ogden and Roseville was 265 cars; via all lines 4,400; Southern Pacific percentage 6 per cent." The cars that went by Roseville passed through Ogden. The largest part of the merchandise consumed in the Willamette Valley is distributed from Portland, and the credits and banking of the Valley points—the business—are chiefly if not entirely with the financial institutions of Portland.

Portland is jobbing and financial center for Willamette Valley.

Difficulties of Roseville route to the east.

(4494) The difficulties and length of haul by the Roseville route are complicated with the further difficulty of the hauling of empties north to points of origin—the preponderance of Willamette River tonnage is outbound. Rough lumber from the valley

90% of hops local to S. P. rails.

moves principally to California. The Willamette Valley does not stop with a few river points served by the river boats. Ninety per cent. of the output of hops, the principal Valley product, is local to the S. P. rails; about 10 per cent. of the total hop crop moved to Portland by boat—the other 90 per cent. would be shipped over the S. P. rails. (4495) This rough lumber to California goes, some of it, to San Francisco and Bay points. The preponderance of the outbound Valley tonnage has necessitated the hauling of empties into the Valley to supply southbound traffic. The S. P. car supply points for the empties would be Sacramento and San Francisco, the San Francisco system to Portland over the Short Line being 746 miles.

Long haul for empties northbound.

Lumber shipper better served via Portland.

The Willamette Valley finds its market for the clear lumber in Utah, Colorado, Kansas, Nebraska and beyond, and as between Portland and Sacramento, the shipper is better served from Portland the distance from which is a great deal less than from San Francisco, and there is a long and expensive haul from Sacramento. Those empties hauled north from Sacramento or San Francisco to supply the outgoing Valley tonnage could, generally speaking, be loaded to advantage in California. Prior to 1900, and ever since, so far as the Portland gateway is concerned, in respect to a through route and joint rates and divisions on business from the Willamette Valley points, through rates were in effect between the S. P. and the O. R. & N.[1] on all traffic except eastbound lumber, and those joint rates have been applied for several years prior to 1900.

Since prior to 1900 through rates were in effect via Portland on all traffic but lumber.

(4496) For some years before 1900 the Portland gateway was open on the same through rate as the Roseville gateway for all Valley traffic except lumber. Prior and subsequent to 1900, rates and divisions on Oregon business have been maintained through the southern gateways, Mojave and El Paso; I think there is a through rate on lumber through those gateways, but I do not think the same rate applies as via Portland, but no business moves that way. No through rate was discontinued after 1900 on the Oregon business, except as to this route over the Siskiyou and Sierras by way of Roseville and Ogden. Prior to what has been called the closing of the Roseville gateway, the Portland gateway had been open for years on all Valley traffic except lumber. It was to the shipper's material advantage that business originating at S. P. points in Oregon should be sent through Portland instead of Roseville, and the S. P. had been requested by valley shippers prior to 1901 to open the Portland gateway to lumber. On the through route via Portland, open for some years prior to 1900 on all this Valley traffic except lumber, the S. P. received south of Portland 30 per cent. of the west of Missouri proportion of the through rate; while the division accruing to the S. P. for the haul through Roseville via Ogden was 58 per cent.

No through rate discontinued except as to Roseville route.

S. P.'s division.

S. P.'s through arrangement with N. P.

(4497) The S. P. had the same through arrangements and through routes with the N. P. as with the O. R. & N. via Portland, on all Valley traffic except lumber, prior to 1900. The O. R. & N. and the N. P. distributed lumber from their own rails to local points.

S. P.'s division of through rate.

After the so-called closing of the Roseville gateway the S. P. received 40 per cent. of the west-of-the-Missouri proportion of the through rates except on lumber. Lumber was a low-grade commodity, and the percentage accruing to the S. P. on lumber for the short haul was 25 per cent. of the west-of-the-Missouri proportion. The S. P. never has had any through rate on lumber with the N. P. via Portland. The Portland gateway was opened to lumber originating at S. P. points in the Willamette Valley some time in 1901. At that time the S. P. lumber in Oregon was given an outlet through the Portland gateway and treated like any other traffic originating on S. P. rails in Oregon, so far as the Portland gateway was concerned. I have been for a number of years in the railroad business in that country.

Lumber put on parity with other traffic by opening of Portland gateway.

Shipper's advantage.

The arrangement by which the Portland gateway was opened and the traffic originating in Oregon sent through Portland instead of being sent over the Siskiyous and the Sierras via Roseville, was to the material advantage of the shipper. To the territory Utah and east, when the Portland gateway was opened and the Roseville closed, the same rates on eastbound lumber were accorded the shippers in the Willamette Valley as applied from Portland in the first instance. (4498) The lumber rate to the Missouri River was $10 a ton, to Utah and Colorado $8 a ton, and to Chicago $11, out of which the lines west of the Missouri River earned $9. These were the 1901 rates. Beyond Portland the O. R. & N. carried freight from San Francisco to points reached by the N. P. in Oregon, Washington and Idaho. The O. R. & N. has no rails to Montana, and their business moved to Montana points via Wallula, Spokane, and Huntington, largely via Wallula to Montana common points. The O. R. & N. had broken service to these common points with the N. P.—steamship San Francisco to Portland, rail line beyond. The N. P. had steamship San Francisco to Tacoma and Seattle, rail beyond. The S. P. had no means of reaching those points except as a connection of the N. P. or the O. R. & N. It had through rates with the O. R. & N. to these points reached by the latter, and also with the N. P.

Routes to common points in northwest.

Higher rate via S. P. route.

Routes to common points.

(4499) The rate applying over the all-rail route of the S. P. and its northern connections, as compared with the rate made by those connections over their own broken service routes, was higher to all points in Washington, Oregon and Idaho. The S. P. business to Montana common points from San Francisco moved principally via Ogden. Points in Southern Idaho, like Boise, could be reached by the O. R. & N. or the S. P. only in connection with the O. S. L. To Montana common points rates all rail and by broken service are the same. The traffic could move from San Francisco via the S. P. to Portland, and thence over the N. P. rail line, to Montana common points at the same rate as to Portland via the O. R. & N. ships, and thence to Huntington by the O. R. & N. rail lines, thence to Pocatello and to Montana by the O. S. L. The differential between all-rail rates to Eastern Oregon, Washington and Idaho, and the rate by

Differential to eastern Oregon, Washington and Idaho.

broken service, ranged, I think, from 10 cents first class down to about 3 cents on the lower classes. All character of tonnage moved, sugar perhaps would be one of the heaviest commodities.

Sugar rates.

(4500) Sugar we call a California product, an important one; it moved under a commodity rate San Francisco to Portland, and under a fifth-class rate, in carloads, Portland to these points. On sugar in carloads the differential was 3 cents a hundred on the through rate, the commodity rail rate San Francisco to Portland being 3 cents higher than by the boat line, and the same rate applying to Portland—the differential applying to all points in Idaho, Washington and Oregon during 1899, 1900 and 1901. (4501) The differential has not been abolished, except on traffic to Oregon points served by the O. R. & N.; the rates have been the same two or three years. "The rates from San Francisco into this Oregon territory on the Navigation Lines by boat through Portland were established on the basis of the same water differential or water arbitrary that was used in forming through rates from San Francisco to points in eastern Washington and northern Idaho, and those rates in turn were fixed by the water rates that were charged from San Francisco to Puget Sound. The rates by rail were higher to the extent of about 10 cents per hundred pounds first class.

Rates from San Francisco into Oregon territory via boat line.

"Then we concluded that the rates from San Francisco to points in Oregon east of Portland should not necessarily be the same as the basis used in arriving at the rates to Puget Sound for the purpose of meeting competition through the Tacoma and Seattle gateways; therefore, they were put on substantially the sum of the locals on Portland both by rail and by water. In other words, we could find no good reason at our dead local points in making rates from San Francisco, either all-rail or by water and rail, less than the full combination of the locals through Portland. And I think they stand that way to-day. * * * I made this explanation for the purpose of informing you of the basis upon which these rates were constructed from San Francisco to all of these interior points. Now, if we make a mistake in fixing our rates from San Francisco to Oregon points where we did not find the conditions to be the same as elsewhere, there was no reason why those rates should not be changed."

Differential abolished.

(4502) The differential was started about 1897, and continued up to about three or four years ago. It was abolished about two years after I became General Freight Agent, something like that. It is very questionable in my mind whether the rates were advanced in all instances; and those cases where the rates were advanced, if they were advanced, were not of any great magnitude. (4503) In explaining that there was no reason for the maintenance of these low rates in the absence of Puget Sound competition, I wanted to have it understood that there are two different bases of rates observed in that territory. Some of the rates were advanced, I cannot give any instance where the rates were advanced, nor where they were cut down. "In other words, the rates from San Francisco to

No reason for the maintenance of the low rates.

all points in the state of Oregon on the Navigation line east of Pendleton, Oregon, are the rates from San Francisco to Portland (whether they are the water rates or the rail rates) added to the rates from Portland to destination. Now, if that in any case has resulted in an advance, it has resulted in an advance."

Changes in rates.

Rates have been advanced in some instances, and I think possibly they have been lowered. I cannot name instances, the whole business doesn't amount to much, the whole thing doesn't amount to much. We could not advance the rates or take out the differentials into Idaho or Washington, where we are in competition with the N. P. (4504) "The rates from San Francisco to points in eastern Washington and Idaho should properly be made on exactly the same basis as we are making rates to-day from San Francisco to points in Oregon. But they are not, although they ought to be." It is the result of competition created by steam schooners plying between San Francisco and Puget Sound. And not by reason of another rail line reaching these points. That has nothing to do with it—the fact that the N. P. rail line reaches the points has nothing to do with it. We have no agreement with the N. P. as to maintaining rates. We discussed these matters, I won't even say that there is an understanding about it. (4505) "Previous to 1901 the Southern Pacific carried no rates on lumber whatsoever to the territory east of Colorado. They were established about 1900—not before that—to Kansas and Nebraska and to Chicago in connection with the Union Pacific Railroad only. They remained in effect to Chicago for ten days, and to Kansas and Nebraska for about sixty days, but prior to that time the Southern Pacific carried no rates on lumber to the territory east of Colorado."

Basis of rates into eastern Washington and Idaho.

S. P. rates on lumber to the east.

I think they carried the same rate to Denver and Colorado common points as the O. R. & N. and U. P. I know they did not carry the same rate to Utah, and somewhere about 1897, 1898, 1899, or 1900, the rates from the Willamette Valley and Portland to Utah via the S. P. were higher than by the Huntington Route. To the territory east of Colorado the S. P. had rates into Chicago for ten days only, and to Kansas and Nebraska for about 60 days only. (4506) The mills on the line of the O. R. & N. were at no disadvantage; if there was any disadvantage it was with the mills on the S. P. It was the policy of the S. P. and of the O. R. & N. and the O. S. L. to place their mills on a parity at Salt Lake and at Colorado common points—they carried the same rates to Colorado common points—it was the policy of the O. R. & N., but apparently not the policy of the S. P., because they did carry higher rates in some instances, and in some territory did not carry any rates at all. (4507) The movement of lumber into Colorado common points from Portland and vicinity was quite substantial via the Huntington route.

Mills placed on a parity.

(TESTIMONY RESUMED. NEW YORK CITY, MARCH 1, 1910.)

Statements of lumber tonnage from Portland.

Utah common points to which same rates apply are Ogden, Salt Lake, I think Provo, and intermediates. (4508) We prepared two statements, one for the tonnage to Ogden and Salt Lake separately, another for the tonnage to points on and via the Rio Grande line, which of course would take in everything on the Rio Grande line east of Ogden or Provo, taking in Provo. The lumber tonnage from Portland to points on and via the Rio Grande lines via Huntington for 1899 was 5,852 tons; 1900, 14,106 tons; 1901, 11,436 tons. (4509) The combined O. R. & N. and O. S. L. revenue for 1899 was $30,819.44; 1900, $67,461.88; 1901, $55,937.61.

Lumber movement from S. P. points in Oregon.

The movement of lumber from S. P. points in Oregon to Utah and Colorado via Roseville was, for 1894, (4510) 219 cars; 1895, 1,067 cars; 1896, 1,455; 1897, 1,157. Subsequently to 1897 I have the figures including the movement to California, but not segregated. I don't think there was any movement to California prior to 1897. These later figures were found in the office of the S. P. freight agent at Portland, showing the movement of lumber south to Ashland, not segregated as to territory. For 1898 the lumber shipments from S. P. points in Oregon to Utah, Colorado and California were 2,168 cars; 1899, 3,954; 1900, 6,578; 1901, 7,048. Subsequently to that the figures cover only California business, the Utah and Colorado business moving via Portland. The California movement for 1902 was 7,559 cars; 1903, 4,914; 1904, 4,284; 1905, 5,240; 1906, 6,245; 1907, 5,443. I have not the later figures.

Lumber rates.

It was not until 1898 that the S. P. established rates on lumber to California. They had in rates to Utah and Colorado, their Utah rates at that time being 40 cents per 100 pounds, while the O. R. & N. rates were 37½. That covers the period from 1897 to December 1, 1900, when the rate via Huntington was made 40 cents; and during the same period the S. P. rate Portland and points south to Utah common points was 40 cents. (4511) During this same period, the rate Portland and points south on the S. P., and points east of Portland on the O. R. & N., to Colorado common points, was 40 cents on lumber by both routes. The S. P. rate applied later all through to Ashland, but originally was confined to the lumber shipping points extending as the business developed. The O. R. & N. rate went east from Portland to the various lumber producing points. The S. P. movement south of Portland, 219 cars for 1894, and so on, included Portland and points south.

Westbound business from Colorado and Utah to Portland negligible.

There is some westbound business between Colorado and Utah points and Portland, but so small as to be practically negligible. (4512) It is practically negligible outside of the business of the Colorado Fuel & Iron Company, manufacturing iron and steel. The coal movement is very, very small in Colorado. My figures for the lumber movement 1894-1897, which I said included the business to Utah and Colorado, also include Nevada. I testified yesterday as to

the approximate carload movement from eastern points to Portland: "In 1898 the movement via Ogden and Roseville was 298 cars, while the total movement via all lines, to Portland was 4,214 cars. The Southern Pacific percentage via Ogden and Roseville, 7 per cent. In 1899 the movement was 251 cars via Ogden and Roseville, and 4,400 cars via all lines; Southern Pacific percentage via Ogden and Roseville 6 per cent. In 1900 the movement via Ogden and Roseville was 265 cars; via all lines 4,400; Southern Pacific percentage 6 per cent." I have the figures via Sunset Route—via all routes other than the Ogden and S. P., including the S. P. routes via El Paso and Mojave—not exclusively Sunset: In 1898, 182 cars; in 1899, 146, and in 1900, 151. (4513) These figures include the traffic to Portland and East Portland, and I think Albina, not to points in the Willamette Valley south of Portland, taking the same rates, or points north of Portland, or on the Columbia River reached by the O. R. & N. boats and by boats in connection with the S. P. In all cases they are carload business. It is not the fact that in 1898 and at all times the largest rail movement San Francisco to Portland has been less than carload.

Movement to Portland via Roseville and via all other routes.

Figures via Sunset.

(4514) I am sure of this. The L. C. L. movement San Francisco to Portland has not been substantial by rail. There is some movement from San Francisco to points south of Portland by rail. The San Francisco merchants wholesale into that territory, but to a limited extent. My figures for 1908 San Francisco to Portland dealt with carload business to Portland proper. I took 1908 just to show what the carload business is at the present time—no other reason for taking 1908 and not 1909. (4515) Tin cans have been brought up from San Francisco by boat to the Columbia River canneries, but always in crates. If any arrive in Portland in cars they would be taken to the river points by boat. Previously to 1901 the O. R. & N., with which I was connected, was working the Willamette Valley hop traffic actively, both by its boats to Portland and also by the S. P. rails to Portland. The S. P. was then working the hop and wool business preferentially by the Sunset Route. The N. P. had joint rates, and were working this Willamette Valley traffic. (4516) "For the year 1899 the movement of hops from the Willamette Valley via the Southern Pacific was 35,000 bales via Sunset, and 32,000 bales via Ogden. In 1900 the movement via Sunset was 47,000 bales and via Ogden 22,000 bales. Those are the only two years that I have."

L. C. L. movement, San Francisco to Portland, small.

Tin cans.

Hops.

I am speaking of the entire Willamette Valley. Ten per cent. approximately of the Valley hop crop moves by river steamer to Portland. I do not mean to testify that only 10 per cent. were so tributary that they could have moved by the boats. One of our large cars will take a hundred bales of hops, 180 to 185 pounds to the bale. In 1899 and 1900 the carload would be about 80 bales. Very little wool, relatively to Eastern Oregon, is produced in the Willamette Valley—three or four, possibly five million pounds for the entire S. P. lines in Oregon. The movement of business between

Very little wool in Willamette Valley.

San Francisco and Portland by ship, put by me as every five days, was not oftener, except that occasionally an extra steamer was put on to take care of the surplus freight traffic. (4517) The two regular steamers carried passengers, it being a five-day service and for about two years, seven days. The S. P. has a regular freight train San Francisco-Portland, but I don't know whether they send a train out every day with freight for Oregon points; it takes all kinds of freight offered, the cars going through to Portland or to points beyond, and going to California points too. I am not posted about that. A train starts every day from Portland, carrying freight for points south. The differential between the O. R. & N. boat line and the S. P. rail line was established about 1898 at the conclusion of the rate war.

Regular steamers carried passengers.

Freight trains between San Francisco and Portland.

(4518) The differential has been maintained to an extent only. The S. P. does not make all its rates San Francisco-Portland on this fixed differential higher than the water rate. In some instances it does, in some it does not. Where it does not the rate would be lower than it cared to make. There are a number of such commodities, salt is one, the published water rate is $1.50 a ton, and rail rate $3 to $3.60 a ton. The less than carload business moves on class rates by rail, but not by water. On the less than carload or merchandise business the differential is not always observed. The S. P. class rates are on a scale of 51 cents first-class, and the San Francisco & Portland Steamship Company carries merchandise—they use that term—at 35 cents per 100 pounds. The term "merchandise" as applied by the Steamship Company covers everything not otherwise specified in their tariff.

Differential between rail and boat line.

(4519) As to why there was an advance of some rates, leaving others stationary, under the following state of facts: "Q. * * * It appears by Complainant's Exhibit 81-K, at page 881 of the record, being a statement showing the changes in class and commodity rates from Portland to San Francisco, from February 10, 1898, down to July 1, 1908, down to the time when the statement was made up, (December 29, 1908) and also by Complainant's Exhibit 81-J, which is a comparative statement showing changes in class of commodity rates from San Francisco, California, to Portland, Oregon, from February 10, 1898, that outside of the first two classes, there has been a very distinct increase in the class rates from San Francisco to Portland and from Portland to San Francisco, also a distinct raise in the commodity rates, since the unification of these two lines in 1901. Why was it that you made the changes in classes 3, 4, 5, A, B, C, D and E, raising those rates, and left the first and second classes as they were—51 and 41? On the 26th of September, 1901, class 3 was raised from 31 to 36 cents, and class 4 from 26 to 31 cents; class 5 remained the same, 18 cents, and the other classes were unchanged. On July 15, 1905 (that is about the time you got charge of both lines up there) class 3 was raised from 36 cents to 41 cents, making it the same as class 2, and class 4 was raised from 31 cents to 41 cents; class 5 from 18 cents to 28 cents;

class A from 23 cents to 28 cents; class B from 23 (4520) to 28; class C from 18 to 28; class D from 18 to 28; and class E from 18 to 28; and those have been the rates from that time down to December 29, 1908. Now, what was the reason for advancing those lower class rates, beginning with class 3, which has been advanced since 1901 10 cents—from 31 to 41; class 4, which has been advanced from 26 to 41—15 cents; class 5, advanced from 18 to 28—10 cents; class A from 23 to 28—5 cents; class B likewise; class C from 18 to 28—10 cents; class D from 18 to 28—10 cents; and class E from 18 to 28."

Reasons for advancing certain rates.

Answering the above: "One reason is that the rates on those lower classes were too low. The distance from San Francisco to Portland is 746 miles, and here is a scale of rates on the basis of 51 cents first-class—lower than the rates from Chicago to St. Paul for 400 miles; and they are even relatively lower than the rates from New York to Chicago. So I say that one of the answers is that the rates on those lower classes were lower than they ought to have been." When you speak of a 51-cent scale of rates first-class, that is the highest one of the class rates, and the others are scaled down. The relation between those classes varies on different roads and in different territories. I do not know the reason for those lower rates. I think those rates to-day are too low. We have not raised them since December 29, 1908. It is possible some commodity rates have been changed, although I cannot say about that. Fifty-one per cent. first-class does not indicate anything as to the lower classes, except that 51 is the maximum.

Commodity rates.

(4521) The bulk of the traffic on commodities taking class rates would move under third, fourth and fifth class. A great deal moved on commodity rates. I think on the S. P. between San Francisco and Portland most of the traffic moves on a commodity rate considerably lower than the class rate. I think canned goods in carloads are one of the commodities where the differential is not observed, moving up to July 10, 1904, at 15½ cents commodity rate, and up to July 15, 1905, at same rate, and then the rate was put up to 18 cents, which is still, I think, in force. Canned goods take fifth class in carloads, fourth class L. C. L. They take the same rate now that fifth class took prior to the rates of 1895—18 cents; we put the class rate up then to 28 cents. Dried fruits take fourth class in carloads, second class L. C. L., some kinds taking third. That rate was put up the same time from 15½ cents to 18 cents. The rail rates San Francisco-Portland are made, influenced or controlled as the result of water competitive conditions. But not always, "because originally the Southern Pacific put in rates from San Francisco to Portland that were very much higher than these rates; so high in fact that they did not come anywhere near meeting the water competition, and I do not suppose they started out with the idea of meeting water competition, because at one time they had a scale of rates on the basis of 81 first class."

Rates on canned goods and dried fruits.

Low rates during rate war.

They afterwards put in low rates to meet water competition during that rate war. I think those rates are too low to-day, not lower than necessary to meet water competition, in fact they are too high to meet water competition, but too low for the service involved between San Francisco and Portland. (4522) I think they are still influenced by the water competition, but they do not get the business. For several years before 1901, the O. R. & N. bought space in the steamers of the other lines and filled that space when they cared to do so, but we frequently made lower rates ourselves than our published rates on freight which we put into these other steamers, in order to meet to better advantage the competition we found on the ocean division. My attention is called to the testimony of Mr. Jones, Freight Traffic Manager of the S. P., as follows:

Bought space in steamers.

Testimony of Mr. Jones as to changes in rates.

"(Page 593, Vol. 2 of the printed record.) 'Q. It appears by the testimony here that from time to time rates are increased or lowered between here and Portland. Under whose authority is that done? Under whose immediate direction is that done? A. Well, in fixing rates, we have a basis that the rate clerk has adopted for that, a basis—either a differential, higher or lower than certain rates, or a mileage basis, or a rate to the terminal and a rate back. In a change of rates, if a line were to change a rate to-day the rate clerk would naturally change his rate, unless he had instructions otherwise. That is how rates are generally made. Q. I am familiar with that fact, but I want to apply it to this particular case. A. I could go on and say that I suppose that in any change it would be natural, if either line changed the rates, for the other to either raise or lower their rates accordingly on that basis. (4523) Q. Now, take the line of road over which you preside, so far as traffic is concerned, between here and Portland. A. Yes, sir. Q. Mr. Schwerin testified yesterday that he had recently raised the rates by boat between these two points, San Francisco and Portland? A. Yes, sir. Q. And he said that he presumed that the rail rates would go up, as they ordinarily do. Is that the fact—dependent upon the boat rates? A. That would be the natural result on account of the basis I have mentioned. Unless the rate clerk had orders otherwise, he would advance the rate.

Relation between rail and water rates.

"'Q. I assume that, as a matter of fact, where there are two lines such as the boat line between here and Portland, and the rail line between here and Portland, and there has by some agreement been established a differential between the two, if either party to that arrangement changes the rate, the other party, as a matter of course, changes the rate so as to maintain the same differential? A. That would be the natural result. Q. That would be the natural result? A. Yes, that would be the natural result. Q. So that if, as Mr. Schwerin testified yesterday, he found it necessary or advisable to advance the boat rate because the stevedores and longshoremen and the officers on his ships were demanding and receiving higher wages than they had theretofore received, your rail rates would go up automatically because of that fact, * * * —because

of this advance? A. Yes, sir.'" I think that is true with respect to the advances, but not always with respect to lowering rates, because the all-rail rates are down to-day to practically a minimum figure, and are very much lower than they would be if it was not necessary to meet this competition. There is a limit to which the S. P. can go in fixing these rates between San Francisco and Portland for the all-rail service. We have a grain and grain products rate Portland to San Francisco, of 20 cents a 100. The rate on grain and flour from Minneapolis to Chicago is 10 cents.

Rail rates down to a minimum.

(4524) My statement about the rates being higher is incorrect with respect to that particular commodity, but there are a good many others where the reverse is the case. It is more than half as far from Minneapolis to Chicago as from Portland to San Francisco; while our rate on grain and grain products is double, the first-class rate from Chicago to St. Paul is 60 cents. The canned goods rate is 20 cents. I think in the main the statement made by Mr. Jones may be correct, that the making of rates between San Francisco and Portland is something that involves no discretion on the part of the Traffic Manager, but is laid down as a general rule, the rate clerk moves the rate up and down automatically, unless he is instructed otherwise; the rates being put in for the purpose of moving any traffic that may be tendered to us, and we have found by experience that it is better to have rates in force than to have agents telegraphing all the time for rates, and they are fixed as far as possible, the basis is fixed. (4525) Hood River to Ogden by the O. R. & N. is approximately 819 miles; Ogden to Portland 885 miles. Hood River took the 40-cent lumber rate when it was put in from Portland. Whether it is the same as the Portland rate or not, I do not know. It may be slightly less. The distance from Portland to Ogden via the Shasta Route is 1,343 miles.

Duties of rate clerk.

(4526) In going to Palisade by the Shasta Route you have to go over the two mountain ranges about which so much complaint has been made in the testimony, the Siskiyou and the Sierra Nevada. "Q. And you have the advantage of only the climb of eastern Oregon if you ship by the O. R. & N. and the Short Line; is that true? A. Yes. Q. And still you force that traffic now by the Shasta route, although you are the representative of both lines there? A. Yes. It would not make any difference in my position, however, if I was the representative of only one of them. To apply a rate of 40 cents per 100 pounds from Southern Pacific points to these points west of Ogden, and allow the Southern Pacific south of Portland 10 cents per 100 pounds, and allow it 5 cents per 100 pounds west of Ogden or thereabouts, or a total of 15 cents per 100 pounds, would leave 25 cents per 100 pounds for the service from Portland to Ogden. At that time the local rate from Portland to Ogden was 40 cents. Here we were in the attitude of making a rate of $5 a ton from Portland to Ogden on business destined to a point west of Ogden, and we were charging for the same service from

Rates on lumber from Portland to points on S. P. west of Ogden.

Portland to Ogden $8 per ton. It seemed to me that it was an objectionable proposition, particularly when the service from Portland to these points west of Ogden could be performed entirely over one line and in one direction, while via Ogden there was a reverse movement."

I did not refer to Palisade because in that case the rate did not apply from points south of Portland. But take Lucin and Umbria. "Not to Palisade, but let us discuss Palisade for a minute. Palisade is 259 miles west of Ogden. We applied there the Ogden rate of 40 cents; allowed the Southern Pacific, I think, half that service west of Ogden 10 cents per 100 pounds, which left for the service (4527) from Portland to Ogden 30 cents per 100 pounds, while our local rate to Ogden was 40 cents. The reverse movement was still there." The rate on lumber to Chicago is $11 per ton, 55c per 100 pounds. The proportion of that rate west of Omaha is 45 cents per 100, the lines from the Missouri River to Chicago getting the 10 cents. We have no division via Ogden because the business does not move via Ogden. I think we have divisions with the Rio Grande. Assume a lumber shipment to originate on the line of the S. P. south of Portland. It would move east by Portland.

Lumber rate to Chicago.

(4528) The Roseville gateway would take a higher rate, and the desire and purpose was to move the business via Portland. It would move on the locals via Roseville. I do not think anybody would ship that way as against the lower rate by Portland. If that traffic moved to Omaha from Ogden in connection with the Rio Grande, and its connecting lines east of Denver, my impression is the line east of Granger receives 16 cents per 100 pounds. "Q. (By Mr. Severance.) Suppose it goes by the Rio Grande. I suppose in isolated cases traffic has moved by the Rio Grande? A. It would be the same division," but I do not think the lumber rates apply from the Willamette River to Chicago via the Rio Grande lines; they have declined to join because they thought the revenue on the business was too thin—the 16 cents east of Granger. West of Granger the S. P. gets 10 cents, their local, which is a maximum, leaving 19 cents for the O. R. & N. and the O. S. L. to Granger.

Division of rates on lumber to the east.

(4529) In the case of the 40c rate from Portland to Palisade, allowing 10c to the S. P., this leaves us 30c a hundred against 19c a hundred in the other case. "The circumstances and the conditions are dissimilar. In the case that you have recited the movement is continuous in the same direction and is business destined to a point beyond our immediate lines, and the rate is made 55 cents to Chicago by reason of a rate of 45 cents that is made by the Northern Pacific and the Great Northern roads to St. Paul added to the local rate from St. Paul to Chicago. If it was not for that fact the rate to Chicago would be 60 cents per 100 pounds, but the movement is continuous, that is to say, it is in the same direction and to a point beyond our own line. The Palisade shipment is to a point on another line when routed by Ogden and is going

The lumber movement to Chicago is continuous, in the same direction.

The Palisade shipment involves a back haul.

west of Ogden in an opposite direction to which the business moved when it started from Portland or from the point of shipment, and the movement could take place from Portland to Palisade or from the Willamette Valley to Palisade over the one line—Southern Pacific, both points being on the same road and the movement being continuous, or, that is to say, in the same direction from the point of movement to destination."

As to lumber to Utah common points, originating in the Willamette Valley south of Portland, and the forcing of that business through Portland and around by the O. S. L., instead of carrying it right through on the S. P., the distinction is because Ogden, which is the most westerly point, is on the U. P. (4530) As to the movement of traffic in lumber to Ogden from the Willamette Valley over the S. P. to Portland and then east over the O. R. & N. and O. S. L.: (4531) It does not move against itself or in the reverse direction, but continuously in one direction. Via Portland, you move it north and east, and via Roseville south and east. The reasons for doing it are just as I have stated. In reference to the statement of Mr. Eccles at Salt Lake, that we took out the 40c lumber rate, Hood River to Nevada, and he had to ship west from Hood River into Portland, and thence by the Shasta Route at an increase of 5c a hundred, "the rate applied from Hood River only as an incident, because the rate was made from Portland, and Hood River, being intermediate, the rate was not exceeded from that point. The rate was put in from Portland to assist the Southern Pacific Company or assist the shippers in moving their traffic to that territory as against the route via Shasta or Roseville because they could not take care of the business." That was in 1905, when one of the rates was put in, the other in 1907. The Shasta Route could not take care of the business because it could not furnish the cars or the equipment.

Lumber from Willamette Valley to the east via Portland does not move in the reverse direction.

Hood river rate put in as an incident.

Shasta route could not furnish cars.

(4532) The S. P. had to bring cars up empty from California. The O. R. & N. and the O. S. L. would not haul empty cars from the East over their lines to be delivered to the S. P. to move traffic originating in the Willamette Valley south of Ashland. It is not done—except possibly in an occasional instance, where the exigency of the case demands some such action. Lucin is 112 miles west of Ogden, and Umbria 104. By the S. P. line, Portland to Lucin would be 1,241 miles, as against 921 by the O. R. & N., O. S. L., and back over the S. P. "Q. (By MR. SEVERANCE.) And you think it is in the interests of moving traffic economically and comfortably and speedily in this case to force traffic over these two mountain ranges and 300 miles further, although you think that would not be the case if the movement was clear through to Ogden. A. My own judgment about it is that it would be very much to the interest of the Southern Pacific to move the business via Portland and Ogden. * * * (4533) I also think that the public could get better service that way than they could via the other route."

Distance, Portland to Lucin, via Roseville and via Ogden.

To the interest of S. P. to move the traffic via Portland and Ogden.

Public could get better service that way.

Reasons why it is not moved that way.

I do not move it that way because I do not think it was to the interest of the O. R. & N. and the O. S. L. to do it, because of the comparison it is possible to make of the proportion that we would get of the through rate from Portland to Oregon with our local rate from Portland to Ogden, and in these times that is one of the controlling forces in the making of rates that are abnormally low—the comparison which could be used on other traffic or traffic in other territory. We paid the S. P. for handling that traffic from Ogden to Umbria 5c a hundred, leaving us 35c from Portland to Ogden, but the stuff came from the Willamette Valley. On Mr. Eccles' business the O. R. & N. and the O. S. L. had 35c for moving the business to Ogden. "Mr. Eccles has a very large lumber trade in Ogden, Salt Lake and throughout Utah. If we can haul Mr. Eccles' lumber from Hood (4534) River to Ogden when destined to Lucin for 35 cents a hundred pounds, why is it not natural that Mr. Eccles would expect us to haul his Ogden lumber from Hood River for 35 cents a hundred? Now on this business from the Willamette Valley to Lucin and Umbria the S. P. will perform a maximum haul of 125 miles to Portland, for which it would earn 10 cents per hundred pounds, and it would perform a haul of 102 miles west of Ogden for which it would earn 5 cents per hundred pounds, or a total distance hauled of 227 miles, for which it would earn 15 cents per 100 pounds.

"Now, if it took the business from Portland to Lucin or Umbria via Shasta, it would haul the freight about 1,240 miles—— * * * 1,241—and deducting 125 miles for the service south of Portland, which it would not perform in that case, it would leave the haul from the Willamette Valley 1,116 miles. Now, the difference between 1,116 miles of service via Roseville and 227 miles which it would perform to Portland and west of Ogden would leave 889 miles. Now it has earned 15 cents or would earn 15 cents for this 227 miles, and it would earn 40 cents for the 1,116 miles—or a difference of 25 cents per 100 pounds for a haul of 889 miles, with an empty car haul northbound and a loaded car haul southbound over the Siskiyou Mountains and the Sierra Nevada Mountains. So I think there would be more net money for the Southern Pacific to haul from the Willamette Valley to Umbria via Portland and Oregon than as against the route via Roseville." From a S. P. standpoint I think the business would be more profitable to the S. P. moved by Portland than via Ogden.

Paper from Oregon City.

(4535) As to the movement of traffic from Oregon City to San Francisco, speaking of paper: Some of that paper is brought down to Portland and sent down by the boat, and some of it is taken by a little boat across the river to a small station and sent south by the S. P. rail lines. Mr. Stubbs said none of it moved by rail; well, Mr. Stubbs referred to the San Francisco paper, I take it, which is true. I have spoken of certain Oregon points that could be reached either by the O. R. & N. broken service, and which could also be reached by the S. P. as a connection of the O. R. & N.

Those were points not reached by the Puget Sound Route of the N. P. There are no points west of Pasco reached in common by the N. P. and the O. R. & N. As to this matter of raising rates, and of the differential between rail and water, and the lifting up of the water rate above its original lower basis, I have looked into that matter.

No points west of Pasco, common to N. P. and O. R. & N.

(4536) "I find that we have in effect to-day a tariff which names the same arbitraries for the ocean service between San Francisco and Portland on business destined to all points on the Navigation lines in Oregon as are used on business destined to points on the Navigation lines in Washington and Idaho competitive with the Northern Pacific. In other words we use to-day but one scale of arbitraries between San Francisco and Portland on business originating at or destined to all points on the Navigation lines. The tariff is O. R. N. No. 71-A, effective February 1, 1910. * * * I mean to say that those arbitraries, to use that expression,—I was referring to certain rates that are lower than the local rates between San Francisco and Portland. Formerly the rates between San Francisco and points in Oregon were built or made on the basis of the local rates between San Francisco and Portland added to the rates between Portland and destination."

Raising of water rates.

Our present rates to these Oregon points reached by the S. P. in connection with the O. R. & N., but not by the N. P., as to those points the lower rate by the water is a component part of the rate to such points. The rate is now made up to those points from San Francisco as a combination by water to Portland, and rail thence to destination. The S. P. rail rate is made up of its own rail rate to Portland, plus the rate thence to destination. The fact is we have a lower rate by the O. R. & N. water and rail route to these points to-day than all rail S. P. and O. R. & N. So far as these Oregon points spoken of are concerned, the S. P. never could reach them at any time except as a connection of the O. R. & N. (4537) The volume of the less than carload freight from San Francisco to Portland represents on an average about 2½ tons per day. The tonnage of lumber from Portland to points on and via the Rio Grande lines via Huntington for 1899 was 5,852 tons; 1900, 14,106; 1901, 11,436; U. P. System line's revenue, 1899, $30,819.44; 1900, $67,461.88; 1901, $55,937.61.

Rates to Oregon points reached by S. P. in connection with O. R. & N., but not reached by N. P.

Lumber tonnage to Rio Grande points.

When we took out the joint rates by the O. R. & N. and O. S. L. to Ogden and thence west over the S. P. to Nevada points, we took out all rates of that kind west of Ogden. Traffic from the Willamette Valley or Portland to points immediately west of Ogden across Utah and Nevada would go S. P., to get the direct rate, unless it went on the sum of the locals—in fact, the only rates we had in to points west of Ogden were lumber rates. (4538) Tariff I. C. C. No. 1494, effective February 10, Supplement No. 2, effective March 20, has proportional class rates between San Francisco and Portland, East Portland and Albina, and between points in Group 1, page 5, and the last-named points, on shipments to or from points on the

The only rates from Portland to points west of Ogden via O. S. L. were lumber rates.

Basis of certain through rates from San Francisco to points east of Portland.

Camas Prairie road, and the O. R. & N. Co. east of East Portland, including Mullen, Idaho, 35c first-class down to 13c class 5 and the subsequent classes; that is merely a basis that is used in arriving at through rates—the rate used from San Francisco to Portland, added to the rate from Portland to destination makes the through rate. We take the through charges between San Francisco and point of origin and destination, and subdivide between the O. R. & N. rail line and the San Francisco and Portland Steamship Company. The 35 cents first class, shown as the proportional rate San Francisco to Portland, is not the amount that the Steamship Company receives for its service, but an arbitrary basis used in fixing the through rates.

(4539) We add the rates, San Francisco-Portland, to the rates between Portland and Oregon, Washington and Idaho points, and the result is the joint through rate. The first-class rate Portland to Spokane is $1.35, and the first-class rate from San Francisco to Spokane by water would be this $1.35 from Portland, added to the 35cts, shown in the tariff from San Francisco to Portland, $1.70 being the first-class through rate to Spokane; all rail, the through rate would be $1.35 plus the 45-cent scale San Francisco to Portland, or $1.80. There is a differential to all of these points. The N. P. reaches Spokane. (4540) Down to these points in Oregon, which I spoke of yesterday, a differential exists, and has always existed. Let me recite a little history: "There are certain local rates in effect between San Francisco and Puget Sound and San Francisco and Portland via water; there are certain local rates in effect between San Francisco and Portland by rail. Ordinarily through rates between San Francisco and points east of Puget Sound and east of Portland would be made on the basis of the full combination of the ocean local to Puget Sound and the rail rates beyond. * * *

Basis of rate making to points east of Puget Sound and Portland.

(4541) "Or Portland, or on any basis of the local rail rate to Portland added to the full local rates beyond. But owing to the competition that exists on the ocean and the desire or disposition on the part of the rail lines to hold as much of the San Francisco traffic as is practicable to their regular connections, rates from San Francisco to the territory east of Puget Sound and east of Portland are in some instances made on a slightly lower basis than the local water rates, and these slightly lower rates are the proportional rates shown on that tariff in front of you. Now, to points in eastern Washington and northern Idaho served by the lines of the Navigation Company, and which is almost in its entirety competitive with other lines, the rates are made on the basis of the proportional rates referred to, added to the full local rates of the rail carriers. That in order that the rates from San Francisco through Portland may be no different than the rates through Puget Sound. In Oregon a different situation exists. The competition through Puget Sound does not have to be met because there are no through rates from Puget Sound to that territory. Therefore, it has been our

practice for several years to make the rates from San Francisco to these Oregon points both by water to Portland and by rail to Portland the full combination of the local rates from San Francisco to Portland added to the rates from Portland to destination where at least the full combination of local rates was not exceeded.

"Now, it so happens that the rail rates from San Francisco to Portland are higher than the water rates from San Francisco to Portland. Therefore, when the rates from San Francisco to points east of Portland are based on the full combination of the local rates, the rates by rail naturally would be higher than by the mixed water and rail service. And it might so happen that in some instances the rates by the mixed water and rail service would be the same as the all-rail service. Since February 10th, and I think for some two or three months probably prior to that time, the rates from San Francisco to these Oregon points by the mixed water and rail service, instead of being on the full combination of the local rates are on the basis of this 35 cent proportional scale and the commodity rates as shown in that tariff, which in some instances are lower than the local commodity rates on Portland proper business. In other words, as the rates stand to-day, the basis that we use from San Francisco to points in Oregon for the mixed water and rail service are no different than the basis used in arriving at the through rates to points in Washington and Idaho."

(4542) To Oregon points served by the O. R. & N., the rates all-rail and broken service have been the same for three or four years. But to-day the rates by water are considerably lower than by rail. This change occurred by tariff two or three months ago, of which, with a few changes, the tariff of February 10, 1901, is a reissue. This so-called arbitrary, under this February 10 tariff and the tariff immediately preceding it, which we have been using, is somewhat lower than the local water rate—quite usual in making a proportional rate, otherwise there would be no occasion to make the through rate, the rate then being the sum of the locals.

(4542) GEO. W. LUCE.

Luce.

I live at San Francisco, and am General Freight Agent of S. P. San Francisco. Gen. Freight Agt. S. P.

(4543) "I first started with the Central Pacific Railroad in 1875; continued in that service until 1887, when I accepted a position with the Gould lines, with headquarters at San Francisco. After being in their service from September 1, 1888, until September, 1891, I accepted service with the Union Pacific Railroad system, with headquarters at San Francisco, and remained in that service until November 20, 1894, when I re-entered the service of the Southern Pacific as assistant general freight agent, and continued in that position until October 15, 1901, when I was made general freight agent, and occupy that position at the present time." When I was representing the U. P.—General Agent of the Freight Department—in San Francisco, and for many years before that, before the railroads had a

Time when all San Francisco-Portland business went by steamship.

line, business between Portland and San Francisco was moved by the steamships. While I was representing the U. P., I don't think the railroad ran any through trains to Portland, I don't believe they handled any business sufficient to warrant any trains on the Portland business. They naturally ran a daily train out of San Francisco as they do in all directions, to take care of the local business beyond San Francisco—for example, they would take freight to Sacramento.

Local freights only on Shasta route.

(4544) The freight train between San Francisco and Portland would handle freight for Sacramento, Lincoln, Wheatland, Marysville, Oroville, Durham, Nelson, Chico, Red Bluff, up to Dunsmuir and beyond, the points named being in the Sacramento Valley, California. That train would render similar service to S. P. local points in Willamette Valley—that is, handling that traffic as far as Dunsmuir, but I do not think they would have sufficient in any train to run a train beyond there without gathering together trains of three or four days, and then possibly they could run a way train from there toward Portland. The way train service for illustration, would be rendered to Ashland at the Oregon-California State line, and to Grant's Pass, about 100 miles beyond, the train moving along from place to place from San Francisco until it finally reached Portland. At the present time, the freight would make six or seven days from San Francisco to Portland. In 1900 we never considered the rail line traffic in those days. The service in 1900 and 1901 would be about seven or eight days.

Freight service to Portland 6 or 7 days.

S. P. not in the Portland business.

San Francisco route via Portland never used.

(4545) While I was U. P. agent in San Francisco we never considered the S. P. interested in the takings of freight business, San Francisco and Portland, they didn't engage in it, didn't handle the business, didn't seek it. The ocean lines generally handled that business. During my time as agent of the U. P. at San Francisco the route by way of the U. P. to Portland, and thence to San Francisco by steamship, was not at any time operated as a transcontinental route. I never attempted, as freight agent of the U. P., to work any business that way. That business always went, and I always worked it, via Ogden in connection with the S. P. I never knew of any shipments while I was U. P. agent at San Francisco to go by the route of U. P. to Portland, and ocean to San Francisco. The situation in 1900 and 1901 was precisely the same, and since that time the U. P. business has always moved through Ogden by the S. P., eastbound business moving S. P. through Ogden and the U. P. Of that business, through Ogden, in 1900 and 1901, I should say 70 per cent. went to the U. P., and about 30 to the Denver & Rio Grande. Since 1901, recently, the business divided at Ogden, 90 per cent to the U. P., and 10 per cent to the D. & R. G. In 1900 and 1901 the S. P. moved business from the Willamette Valley.

Division of eastbound S. P. business at Ogden.

Willamette Valley traffic.

(4546) There were certain river points in 1900 served by the O. R. & N. boats. The Willamette Valley extended south of those points. The S. P. moved business from the points that were served, or could have been served, by teaming or otherwise, through the

river boats. The tonnage of the S. P. attributable to those river points for 1900 and 1901, as compared with its tonnage from the Willamette Valley as a whole, was about 10 or 11 per cent. It may be fairly stated that the great volume of S. P. tonnage from the Willamette Valley was from points exclusive of these so-called river points. Taking 1899, 1900 and 1901, "the Asiatic business did not go east by the Sunset route. It was always forwarded by Ogden and U. P. and our preferred connections, the Northwestern and the Milwaukee & St. Paul Railroads. Not all of it by those two lines, but I should say about 70 per cent. And that is true of the westbound, except that there was a small portion of westbound Asiatic business that moved via the Sunset route—no eastbound via Sunset."

Asiatic business went east via Ogden route.

Recurring to the steamship business between Portland and San Francisco. "The freight would be unloaded from the ship on to the dock in San Francisco; it would then be loaded on teams and transferred (4547) by the team to the railroad depot or wharves of the river boats, Jackson Street wharf or Washington Street wharf, and then handled again from the wharves into cars or into the steamers, and then locally from the wharves or the depot to the point of destination of the freight. * * * Steamers of light draught, river steamers, plying on the Sacramento River between San Francisco and Sacramento, and also on the San Joaquin River and Stockton Channel, between San Francisco and Stockton. They were light draught river boats." The traffic is not susceptible of delivery by water from San Francisco to places like Sacramento or Stockton by ocean steamers, which are of too great draught and cannot ply those streams at all, but must transfer their freight to the light-draught river boats.

Delivery of O. R. & N. cargoes at interior California points.

In 1900 and 1901 the S. P. reached points in eastern Oregon, Washington and Idaho by connection at Portland with the O. R. & N. or the N. P. At that time the O. R. & N. had its own boat line from San Francisco to Portland, connecting there with its rails, and the N. P. had a traffic arrangement with the Pacific Coast Steamship Company, plying from San Francisco to Tacoma, and their rails thence to these points. The rate by this mixed service was lower than all rail. The principal rail connection of the S. P., over which its business principally moved, was the O. R. & N.—greater division with that line than with the N. P. General merchandise and eastern manufactured goods were quite largely distributed to these Oregon, Washington and Idaho points from Portland, Seattle, Tacoma.

S. P. routes to eastern Oregon and Washington and Idaho.

Jobbing points.

(4548) To some extent Spokane would job into the same territory. The rates to Portland, Tacoma and Seattle are the same as San Francisco, and the distributive rates from those points into the immediate interior are considerably less than from San Francisco. Rates from eastern points to Pacific Coast terminals like San Francisco, Portland, Seattle, Tacoma, are alike. To Montana points, S. P. freight from San Francisco moved via Ogden and O. S. L. and N. P., also Portland and N. P., but mostly via Ogden

Rates from east to coast terminals alike.

S. P. routes to Montana points.

and O. S. L. General merchandise and eastern manufactured goods were principally distributed direct to Montana, for the reason that the rates to Montana are lower than the rates to Portland and San Francisco, considering the local to be added back from San Francisco and Portland. Mr. Jones came to San Francisco as Freight Traffic Manager in September, 1906, from Houston, Texas, and could not possibly have had, in so short a space of time, the local familiarity with conditions that I have. The $3.10 rate, Willamette Valley to San Francisco, was in effect first on green lumber and its products, and included ties. It was concluded that the $3.10 rate was too low, even on green lumber, and the rate on ties in its entirety was increased to $5. The lumber people in the Valley objected to that increase in the lumber rate, and our people negotiated with them and concluded to recede from the $5 rate on green lumber, and reinstated the $3.10 rate on green lumber, leaving ties and all other lumber products at the $5 rate.

Mr. Jones not yet familiar with local conditions.

Rates on ties and green lumber.

(4549) Pine ties are 6 ft. x 8. I think they are selected stock, same class with sills, joists or scantling. With respect to the higher rate on ties, than on ordinary rough lumber, I do not recall a territory where the same conditions exist as do exist upon that line. Generally, I would be willing to apply the same rate on ties as on lumber. But in a territory such as this, where the rates are so extremely low, we believe that ties can stand a higher rate than the rate forced upon the lumber. (4550) I don't happen to know of any instance at the present time of ties taking a higher rate than rough lumber, but probably I could locate some. The fact that the Western Pacific was being built into San Francisco, getting its supply of ties from the Willamette Valley, had nothing to do with keeping the tie rate higher than that on rough lumber. Of that I am sure, the rate was made as I stated. Surface lumber, all other lumber, was left at the $5 rate, excepting the green lumber. Ties are a commodity, they are not green lumber any more than a door is lumber after the door is made. A tie is a finished product for the purpose.

Western Pacific, nothing to do with tie rate.

(4551) The tie can only be used for that purpose, properly speaking. A sill can be cut up and used for various purposes. Others would have done the same as we did if they had the same conditions, with that low rate of $3.10 on; they would have escaped every product of lumber they possibly could, rather than carry it at $3.10. The mill men had started their mills and cut the lumber, and thought it was not fair to advance their rate from $3.10 to $5, and on negotiation we concluded to reduce the rate on green lumber so that it could freely move as before to San Francisco Bay points. I read Mr. Kelly's testimony, of the Booth-Kelly Lumber Company, as to the putting up of the rate on ties to $5 per 1,000, making it impossible for him to deliver in San Francisco or in territory where the Western Pacific was trying to buy ties. He is a big manufacturer of lumber in the Valley. I said I never considered that the S. P. was interested in that traffic between San Francisco and Portland, I say

S. P. never interested in Portland traffic.

they did not seek the business. They did seek business out of San Francisco for Montana.

(4552) I don't know that they did actively, but they sought, handled the business, and handled a majority of the business through Ogden in connection with the O. S. L. I don't think they solicited the business. It came to us naturally, because we were the shortest line, and it was daily all-rail service, and I don't believe that they solicited very much. Mr. F. F. Connor, when he represented the O. R. & N., was on the street soliciting business for the O. R. & N., and he probably would notice that more than I would in the general office after that. In respect to the S. P. taking the business moving locally, between San Francisco and Portland, California products like sugar, canned goods, and things of that sort —if they would back up their cart and deliver it to us we would take it, but we never sought the business. We did not try to get the business at the going rates by steamer; if they would make the delivery to us we would take it, but we would not solicit business for rates higher than the ocean rates, and never did.

Montana traffic.

Portland business handled.

"Q. If that is the case, will you explain to me why on the first day of December, 1895—which was when you were with the Southern Pacific, after you left the Union Pacific—rates were put in by the Southern Pacific Company applying between San Francisco, California, only, and Portland and Salem, Oregon, and points between, as follows: On the first four classes, 12½ cents per hundred pounds, and on the 5th and A, B, C, D and E classes 10 cents per hundred pounds, with the following notation on the traiff: 'These rates are not regarded as fair compensation for the service but are forced by the excessive competition of ocean lines?' (4553) If the Southern Pacific Company was not competing for business local to Portland, why did they put in that tariff? A. As Mr. Stubbs explained, that was that foolish war measure. They simply attempted to get into the business. It was a failure, and they got out of it and have kept out of it ever since." I recall some of the Portland testimony, Portland merchants testifying that they were solicited, but I don't recall any San Francisco merchant having so testified—in Portland probably that was a fact, southbound business. I had general charge of the solicitation of business for the S. P., looked after it. In the last six months I have talked with our General Agent in San Francisco, and he states absolutely that they never solicited the Portland business.

"Foolish war measure."

Never solicited Portland business.

(4554) The S. P. had soliciting agents on the streets seeking S. P. business, at the time when the O. R. & N. was separate. Cars were leaving San Francisco daily, S. P. movement, with traffic, some to northern California, to Southern Oregon, to Portland and beyond. Once in five days the O. R. & N. steamers left San Francisco for Portland, with traffic to Portland and beyond. Ships sail now once in seven days. The present rail freight schedule between San Francisco and Portland is six or seven days. From my general knowledge of the traffic I estimate the river business out of the Willamette Val-

Amt. of river business in Willamette Valley.

ley at 10½ or 11 per cent. I never heard of any arrangement between California citrus fruit shippers and the S. P. with reference to the time of the movement of that traffic to Chicago.

Stebbins.

(4555) C. S. STEBBINS (2)

I was examined in this case, and prepared some statements for Mr. Severance that were introduced into the record, and were compiled from the records of the companies. I was assistant to the General Auditor of the U. P. and S. P., Mr. Young, now succeeded by Mr. C. B. Segar. I have the statement here, marked Defendants' Exhibit 45, Westbound Asiatic Traffic Volume, and U. P. and S. P. Revenue via Portland and via Sunset-Gulf; item via Portland, total traffic tons 262, U. P. revenue $1,044.27. Those were compiled from the records of the company, the same record from which the reports were made to the stockholders and to the Interstate Commerce Commission. (4556) The statement showing the total traffic via the Sunset-Gulf Route, tons 1,098, S. P. revenue $24,789.92, was compiled by the Auditor of the S. P.'s Atlantic Steamship Lines under my direction. In the expression "Movement outward and inward," the words "and inward" should be stricken out. I have the detail for the 262 tons, which is a round figure, the detail showing 261.95. This is for the year ending June 30, 1901. I have not divided it by months. The item "Via Sunset-Gulf" refers to the tonnage via the Sunset Route to San Francisco, including the Atlantic Steamship Lines. The detailed statement, Defendants' Exhibit 45-A, is identical with Defendants' Exhibit 45, heretofore set forth in full (ante pp. 518-519), except that matter preceding the italicized heading, "Statement of tons carried and freight revenue of the Union Pacific system, on westbound freight traffic," etc., is omitted.

Statistics showing tonnage and revenue of certain traffic.

(4559) I have the detail from the Auditor of the Atlantic Steamship Lines to be attached to Defendants' Exhibit 45 for the item Sunset-Gulf Route tonnage 1098, revenue $24,879.92, as follows:

(4560) "The statement last referred to by the witness as being in detail was marked Defendants' Exhibit 45-B, Supplemental, (Stebbins), was offered in evidence by the defendants, and is as follows:"

DEFENDANTS' EXHIBIT 45-B, SUPPLEMENTAL.

(Stebbins)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business forwarded to China and Japan, for fiscal year ending June 30th, 1900.

Tons	Ship Revenue	Rail Revenue	Total System Revenue
1,098	$4,338.24	$20,451.68	$24,789.92

AUDITOR'S OFFICE,
New York, N. Y., Jan. 12th, 1910.
(Sgd) B. G. BARTHOLOMEW,
Auditor.

Defendants' Exhibit 45-C, Supplemental, refers to the movement to San Francisco outward and inward of Asiatic traffic, with volume and U. P. and S. P. revenue for year ending June 30, 1901, and as referred to Portland gives the total traffic as 6,737 tons, with U. P. earnings, outward and inward, compiled from the records of the companies, and in addition to the westbound tonnage of 262 tons included in Defendants' Exhibit 45, comprises similar eastbound tonnage of 6,475 tons with the detail. It is as follows:

(4561)

DEFENDANTS' EXHIBIT 45-C, SUPPLEMENTAL.

(Stebbins)

Lovett's question No. 13.

Sub-Division "A."

ASIATIC TRAFFIC.

Volume and U. P. and S. P. revenue for year ending June 30, 1901.

Movement outward and inward.

Via San Francisco:	Tons		
Total Traffic	26,515	U. P. Revenue	$172,415
		S. P. "	146,872
Average per month	2,210	U. P. "	14,368
		S. P. "	12,239
Via Portland:	Tons		
Total Traffic	6,737	U. P. Revenue	$53,570
Average per month	561	" "	4,464
Via Both Ports:	Tons		
Total Traffic	33,252	U. P. Revenue	$225,985
		S. P. "	146,872
Average per Month	2,771	U. P. "	18,832
		S. P. "	12,239

Authority: Auditor's statements (4) attached.

I have the detailed statement for the eastbound traffic via Portland, 6,475.06 tons. The figures were compiled from the records of the Company. The total tons of freight carried by U. P. system for the year ending June 30, 1901, 8,209,209, have been partially approximated as stated in the foot note, owing to the destruction of records by fire, but the gross operating revenue is exact. (4562) The records of the San Francisco office, and a portion of the records of the Omaha office, were burned. The records of the Portland office are intact, and this statement was compiled from them—I refer to Defendants' Exhibit 45-D Supplemental, in which the figures of the Sunset-Gulf Route were compiled from the records of the Steamship Line. This exhibit is identical with the latter part of Defendants' Exhibit 45, beginning with the italicized heading, "Statement of tons carried and freight revenue of the Union Pacific system, on eastbound freight traffic," etc. (ante p. 519).

(4563) In respect to Defendants' Exhibit 45-C, Supplemental, the figures for Asiatic tonnage via San Francisco, east and west bound, 26,515—S. P. and U. P. records having been destroyed—(4564) were compiled from the records of the C., M. & St. P. and the C. & N. W., to determine the amount of Oriental business via the U. P., Ogden and San Francisco carried by these two lines. The total tonnage shown for the U. P. is estimated on the assumption that the Milwaukee and Northwestern companies carried 70 per cent. of the total.

This detail is in two statements, one bearing the word "To" certain defined territories, and the other the word "From," indicating east and west bound movement, westbound detail and eastbound detail being respectively Defendants' Exhibits 45-E Supplemental, and 45-F Supplemental, which are as follows:

DEFENDANTS' EXHIBIT 45-E, SUPPLEMENTAL.

(Stebbins)

Statement of Freight Traffic from points in Missouri River and Common Points Territory and points east thereof, via the Chicago, Milwaukee & St. Paul Railway and Chicago & North-Western Railway to the Orient, via Union Pacific Railroad, Ogden, Utah, and Southern Pacific Company—Pacific System, for the fiscal year ending June 30, 1901.

From—	Via Chicago, Milwaukee & St. Paul Railway.		Via Chicago & North-Western Railway		Total	
	Tons Carried	Union Pacific Freight Revenue	Tons Carried	Union Pacific Freight Revenue	Tons Carried	Union Pacific Freight Revenue
Missouri River and Common Points Territory.						
Mississippi River and Common Points Territory.			400.62	2,797.82	400.62	2,797.82
Chicago and Common Points Territory.			4,005.70	29,624.79	4,005.70	29,624.79
Cincinnati, Detroit and Common Points Territory.			199.18	1,865.42	199.18	1,865.42
Pittsburg, Buffalo and Common Points Territory			5,565.15	17,304.89	5,565.15	17,304.89
New York, Boston and Common Points Territory			53.16	624.60	53.16	624.60
Various Territories*	1,584.69†	7,206.02†			1,584.69†	7,206.02†
Total	1,584.69	7,206.02	10,253.81	52,217.62	11,808.50	59,423.64

* Not separated by territories. † Approximated.

(4565)

Statement of Freight Traffic from points in Missouri River and Common Points Territory and points east thereof.—Continued.

	Tons Carried.	Freight Revenue
Estimated Total Westbound Oriental Freight Traffic via U. P. R. R., Ogden, and S. P. Co. from territories specified above, Union Pacific System Revenue	16,869.29	84,890.77
Estimated Total Westbound Oriental Freight Traffic via U. P. R. R., Ogden, and S. P. Co. from territories specified above, Southern Pacific Company Revenue	16,869.29	72,314.36
Total Tons of Freight carried by and Gross Operating Revenue of Union Pacific System for fiscal year ending June 30, 1901 (see Note 2)	8,209,209	43,538,181.01
Total Tons of Freight carried by and Gross Operating Revenue of Southern Pacific Company Lines for fiscal year ending June 30, 1901 (see Note 3)	14,272,278	77,244,898.18
Ratio of Estimated Total Westbound Oriental Freight Traffic via this route to Total Tons of Freight Carried by and Gross Operating Revenue of Union Pacific System	0.21%	0.19%
Ratio of Estimated Total Westbound Oriental Freight Traffic via this route to Total Tons of Freight carried by and Gross Operating Revenue of Southern Pacific Co. Lines	0.12%	0.09%

NOTE 1.—The Total Westbound Oriental Freight Traffic via U. P. R. R., Ogden, and S. P. Co. is estimated on the basis that the traffic carried by the C. M. & St. P. Ry. and C. & N. W. Ry. is 70 per cent. of the total traffic via this route.

2.—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad & Navigation Company. Owing to destruction of records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

3.—Southern Pacific Lines include Southern Pacific Company—Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

(4566) "Defendants' Exhibit 45-F, Supplemental, (Stebbins) is as follows:"

DEFENDANTS' EXHIBIT 45-F, SUPPLEMENTAL.

(Stebbins)

Statement of Freight Traffic from the Orient via Southern Pacific Company—Pacific System, Ogden, Utah, and Union Pacific Railroad to points in Missouri River and Common Points Territory and points east thereof, via the Chicago, Milwaukee & St. Paul Railway and Chicago & North-Western Railway, for the fiscal year ending June 30, 1901.

To—	Via Chicago, Milwaukee & St. Paul Railway		Via Chicago & North Western Railway.		Total	
	Tons Carried	Union Pacific Freight Revenue	Tons Carried	Union Pacific Freight Revenue	Tons Carried	Union Pacific Freight Revenue
Missouri River and Common Points Territory.	.....	.....	.....	.....	.....	.....
Mississippi River and Common Points Territory	.....	.....	62.45	516.67	62.45	516.67
Chicago and Common Points Territory	588.18	4,850.38	1,713.55	13,595.06	2,301.73	18,445.44
Cincinnati, Detroit and Common Points Territory	35.13	261.95	143.92	976.21	180.05	1,228.16
Pittsburg, Buffalo and Common Points Territory	21.39	237.52	241.25	1,752.98	262.64	1,990.50
New York, Boston and Common Points Territory	258.90	1,736.46	3,686.54	37,339.95	3,945.44	39,076.41
Total	904.60	7,086.31	5,847.71	54,180.87	6,752.31	61,267.18

	Tons Carried	Freight Revenue
Estimated Total Eastbound Oriental Freight Traffic via S. P. Co., Ogden, and U. P. R. R. to territories specified above, Un. Pac. System Revenue	9,646.16	87,524.54
Estimated Total Eastbound Oriental Freight Traffic via S. P. Co., Ogden, and U. P. R. R., to territories specified above, Southern Pacific Company Revenue	9,646.16	74,557.94
Total Tons carried by and Gross Operating Revenue of Union Pacific System for fiscal year ending June 30, 1901 (See Note 2)	8,209,209	43,538,181.01
Total Tons of Freight carried by and Gross Operating Revenue of Southern Pacific Company Lines for fiscal year ending June 30, 1901 (See Note 3)	14,272,278	77,244,898.18
Ratio of Estimated total Eastbound Oriental Freight Traffic via this route to Total Tons of Freight carried by and Gross Operating Revenue of U. P. System	0.12%	0.20%
Ratio of Estimated Total Eastbound Oriental Freight Traffic via this route to Total Tons of Freight carried by and Gross Operating Revenue of Southern Pacific Co. Lines	0.07%	0.19%

NOTE 1.—The total Eastbound Oriental Freight Traffic via S. P. Co., Ogden, and U. P. R. R. is estimated on the basis that the traffic carried by the C. M. & St. P. Ry. and C. & N. W. Ry. is 70 per cent. of the total traffic via this route.

2.—Union Pacific System includes U. P. R. R. Co., O. S. L. R. R Co. and the rail and water lines of the O. R. & N. Co. Owing to destruction of records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

3.—Southern Pacific Company Lines include Southern Pacific Co.—Pac. Sys. and the lines east of El Paso in which the Sou. Pac. Co. has an interest, including the Sunset-Central Lines (so-called) and the Sou. Pac. Co.'s Atlantic Steamship Lines.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

(4567) Our own clerks were given access to the Milwaukee and Northwestern records, and made the compilation.

For Defendants' Exhibit 46, compiled from the records of the O. R. & N., I have a detail attached to that exhibit, which is the detail attached thereto and put into the record on Mr. Stubbs' testimony. The statement in Exhibit 46 beginning "The showing for the Southern Pacific," etc., was Mr Stubbs' estimate. The detailed statement, Defendants' Exhibit 46-A Supplemental, is identical with the latter part of Defendants' Exhibit 46, beginning with the italicized heading, "Statement of tonnage," etc. (ante p. 521.)

(4568) Referring to Defendants' Exhibit 47, and to the statement of the O. R. & N. tonnage, 37,066, and the U. P. System earnings against them, and to the statement "Deduct non-competitive 30,704"—this was supported by a detailed statement in which a portion of the figures were shown as approximated. I now have a revised statement, in which actual figures are given for all amounts shown thereon, and the detailed statement here in which actual figures are substituted for approximate. These statements, Defendants' Exhibits 47-A and 47-B, are as follows:

DEFENDANTS' EXHIBIT 47-A, SUPPLEMENTAL.

(Stebbins)

Sub-Division "D."

Lovett's question No. 13.

WILLAMETTE VALLEY TRAFFIC.

Year Ending June 30, 1901.

Excluding traffic to and from local points on Union Pacific System, rail and water lines, West of Ogden.

	Tons		
Via O. R. & N. Co.	37,066	U. P. Sys. Earnings	$120,291.39
Average per Month	3,088	"	10,024.28
Deduct Non-Competitive	30,186	"	77,169.79
Remaining Competitive	6,880	"	43,121.60
Average per month	573	"	3,593.47
Via Southern Pacific Estimated Average per month	2,120	Earnings	12,196.50
Total Average per month	2,693	"	$15,789.97

(4569) Authority: For the O. R. & N. Co. Auditor's statement attached. For the *Southern Pacific*: Tonnage is estimated at 50 per cent more than Steamship tonnage, and the earnings are computed at 90 cents per ton higher than the rate via O. R. & N. Co.

Defendants' Exhibit 47-B, Supplemental, (Stebbins) is as follows:

DEFENDANTS' EXHIBIT 47-B, SUPPLEMENTAL.

(Stebbins)

Statement showing tonnage and Union Pacific System freight revenue on certain freight traffic handled by the Oregon Railroad & Navigation Company's Willamette River boats for the fiscal year ending June 30, 1901.

	Tons Carried	Union Pacific System Freight Revenue
From San Francisco to the River	3,649	11,713.03
To " from "	23,992	71,899.58
From Ogden and Beyond to the River	592	16,615.54
To " from "	388	7,175.82
From All other points in Northwest to the River	755	3,912.49
To " in Northwest from the River	7,690	8,974.93
Total to the River	4,996	32,241.06
Total from the River	32,070	88,050.33
Grand Total	37,066	120,291.39
Deduct the following traffic to and from the paper mills at Oregon City, which traffic is not competitive:		
From San Francisco to the River	2,512	6,553.68
To " from "	20,104	56,557.75
From Other Points to the River	798	851.27
To " from "	6,772	13,207.09
Total	30,186	77,169.79
Balance	6,880	43,121.60

	Total Tons Carried	Gross Operating Revenue
Total tons of freight carried by and gross operating revenue of Union Pacific system for year ending June 30, 1901 (See Note 1)	8,209,209	43,538,181.01
Ratio of competitive freight traffic handled by O. R. & N. Co.'s Willamette River boats to total tons of freight carried by and gross operating revenue of Union Pacific System	0.08%	0.10%

NOTES:

1.—Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad & Navigation Company. Owing to the destruction of certain records by fire, the total tons of freight have been partially approximated. The gross operating revenue is correct.

(4570) 2.—This statement does not include traffic to and from points on the O. R. & N. rail and water lines, except San Francisco, or traffic to and from points on O. S. L. R. R. west of Ogden.

3.—"Non-competitive traffic from other points deducted, covers traffic from Northern Pacific and Columbia River points" via Portland.

4.—"Non-competitive traffic to other points," deducted, covers traffic to Seattle, Tacoma and Australia via Seattle, to Salt Lake City, and to points on S. P. Co. via Portland.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

These figures were compiled from the records, except one amount of the total tons carried of the U. P. System, which is approximated, the revenue against it being actual. The deduction to and from the paper mills of noncompetitive traffic is Mr. Stubbs' memorandum. The figures in 47-B following the statement of deduction, aggregating 30,000 tons, are the deducted traffic, the deduction based on that note, and these notes at the foot of the statement, 3 and 4. The items from San Francisco to the river, and to San Francisco from the river, are the San Francisco paper mill business at Oregon City, back and forth. (4571) The figures for Defendants' Exhibit 48—via Southern Pacific, tons 1,428, with Southern Pacific earnings against it—(under heading of Lumber and other traffic from Portland to Ogden and common points and beyond, via S. P. Co. and D. & R. G., and via U. P. System) were furnished by the General Auditor of the D. & R. G., the S. P. records having been destroyed, and I have a copy of the detail of that General Auditor. The item via U. P., tons 13,768, was compiled from the records. These detailed statements are Defendants' Exhibits 48-A Supplemental, and 48-B Supplemental.

(4572) Defendants' Exhibit 48-A supplemental is identical with the latter part of Defendants' Exhibit 48, beginning with the italicized heading. "Tonnage and revenue on freight traffic," etc. (ante pp. 525.)

Defendants' Exhibit 48-B is as follows:

DEFENDANTS' EXHIBIT 48-B, SUPPLEMENTAL.

(Stebbins)

Freight traffic originating at Portland, Ore., routed east, via Rio Grande Lines.
Section No. 1.

	Tons	So. Pac. Revenue
July, 1900		
To Utah Points	165	$983.14
" Colorado "	494	2,936.08
" Eastern "	27	247.68
	686	4,166.90
September, 1900		
To Utah Points	79	486.56
" Colorado "	54	339.55
" Eastern "	8	93.25
	141	919.36
November, 1900		
To Utah Points	70	384.02
" Colorado "	45	288.85
" Eastern "	172	1,508.16
	287	2,181.03
January, 1901		
To Utah Points	34	223.31
" Colorado "	43	299.08
" Eastern "	43	506.80
	120	1,029.19

(4574)
Freight traffic originating at Portland, Ore., routed east, etc.—Continued.

	Tons	So. Pac. Revenue
March, 1901		
To Utah Points	16	$ 111.15
" Colorado "	41	281.40
" Eastern "	83	818.16
	140	1,210.71
April, 1901		
To Utah Points	0	.00
" Colorado "	17	118.01
" Eastern "	37	455.39
	54	573.60
Total	1,428	$10,080.79

NOTE.—See detail for partial information as to lumber shipments, included in above figures, full information not being available.

The figures for Defendants' Exhibit 49 were compiled from the U. P. and S. P. records. We have the records for the traffic via the S. P., except one book of Waybills for one month from New Orleans to Oregon points, which was missing from the files, and the statement is incomplete to the extent of whatever Portland traffic might have been covered by the missing waybills. It was the opinion of Auditor Edwards of New Orleans, who made the statement and did the detail work, and who is here, that this would not change the total more than one per cent. The S. P. records for the year were obtainable at New Orleans, covering the S. P. Sunset Route via El Paso and New Orleans. The approximation of the total tons carried of the S. P., 12,243,763, was taken from a record made in 1900 or 1901. On a critical examination of these figures within the last few days, I am satisfied they should be reduced 5 per cent. (4575) The revenue is actual. The reduction of 5 per cent. in the tons carried would not be sufficient to change the percentage based thereon, which is the ratio that the freight traffic between Portland and the specified territory bears to the total tons of freight carried by S. P. lines—three-hundredths of one per cent. Defendants' Exhibits 49-A Supplemental is identical with that part of Defendants' Exhibit 49 beginning with italicized heading, "Statement of freight traffic between Portland, Oregon," etc., and ending with Mr. Stebbins' signature just preceding the italicized heading, "Statement of tons carried," etc. (ante pp. 526-527.)

(4576) Defendants' Exhibit 49-B Supplemental is identical with the latter part of Defendants' Exhibit 49 beginning with the italicized heading, "Statement of tons carried," etc. (ante p. 527.)

Referring to Defendants' Exhibit 50-A, and to the item "Via Rio Grande and Southern Pacific," those figures were furnished by the D. & R. G. Railroad Company. (4577) The figures 1,958 tons

westbound traffic are a correct transcript of the figures received from the D. & R. G. The traffic eastbound, marked on the statement as "Estimated," was incorrectly drawn off from the D. & R. G. statement. I have here a corrected statement in which the correct figures for the D. & R. G. business are used. The figures from that company applying to six months business only were doubled to make the estimated figures for the year. This eastbound traffic should be corrected from 774 tons to 740. I have the detail as to that. The correct statement of earnings is $7,259.28, instead of $1,533.74. On that statement also the total tons carried by the S. P. lines should be reduced about 5 per cent., but this would not affect the percentage based on the tonnage. The details are shown by the Defendants' Exhibit 50-A Supplemental and 50-B Supplemental, which are as follows:

DEFENDANTS' EXHIBIT 50-A, SUPPLEMENTAL.
(Stebbins)
Lovett's question No. 13.

Sub-Division "G."

TRAFFIC.

To and from Portland and Atlantic Seaboard, Pittsburgh, and Ohio River Territories.

The showing below includes all traffic between Portland and points on and east of Missouri River, year ending June 30, 1900.

(Is included in answer to "F.")

Via Union Pacific

Via Rio Grande and Southern Pacific W. B.	Tons 1958	S. P. Earnings	$19,192.83
Estimated E. B.	740	" "	7,259.28
Total	2698	" "	$26,452.11
Average per month	225	S. P. Earnings	2,204.34

(4578) Authority: Auditor's statements attached. Owing to destruction of S. P. records this information was furnished by D. & R. G. R. R. Co. See A. S. Hughes' letter to J. C. Stubbs, Sept. 9, 1909, and accompanying papers, which are attached as vouchers to Sub-Division "E." The Eastbound Tonnage and Earnings were given for six months only. That showing has been doubled to get the above exhibit.

DEFENDANTS' EXHIBIT 50-B, SUPPLEMENTAL.
(Stebbins)

Statement of freight traffic between Portland, Oregon, and Missouri River and Common Points Territory and points east thereof, via Southern Pacific Company Lines via Ogden and Rio Grande Western Railway, for year ending June 30, 1900.

Westbound		Eastbound		Total	
Tons Carried	S. P. Co. Freight Revenue	Tons Carried	S. P. Co. Freight Revenue	Tons Carried	S. P. Co. Freight Revenue
1,958	19,192.83	740	7,259.28	2,698	26,452.11

Statement of freight traffic between Portland, Oregon, and Missouri River and common points territory and points east thereof, etc.—Continued.

	Total Tons Carried	Gross Operating Revenue
Total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines, for year ending June 30, 1900 (See Note 1).....	12,243,763	63,920,414.22
Ratio of freight traffic between Portland and territory specified, via Ogden, and Rio Grande Western Railway, to total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines.....	0.02%	0.04%

NOTES.—1. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to destruction of records by fire the total tons carried have been partially approximated. The gross operating revenue is correct.

2. Owing to destruction by fire of the records of the Southern Pacific Company, the information in respect to business carried via Rio Grande Western Railway was obtained from the Denver & Rio Grande Railroad Company, successor to Rio Grande Western Railway Company. Figures for eastbound traffic were given for six months only and these were doubled for the year.

Compiled by: (Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

(TESTIMONY RESUMED, NEW YORK CITY, WEDNESDAY, MARCH 2, 1910.)

(4579) Referring to Defendants' Exhibit 51-A. "Hops and Wool to the East," the U. P. figures, 1,290 tons, were compiled from the records of the company. There is an error of the typewriter in the footing of the second column, which should be $6,978.12, instead of $6,826.69. The figures for the S. P. and El Paso, 128 tons, were compiled from the records of the companies. Those being records being accessible. The detail for the S. P. and D. & R. G. was furnished by the General Auditor of the latter company. I have a copy of his letter and of our letter. The detail is shown in Defendants' Exhibit 51-A Supplemental, in which the same reduction should be made as previously noted, of 5 per cent. in the total S. P. freight tonnage, making no change in the percentage based thereon. (4580) Exhibit 51-A Supplemental, is identical with the latter part of Defendants' Exhibit 51, beginning with italicized heading, "Tonnage and freight revenue," etc. (ante pp. 530-531.)

(4581) Referring to Defendants' Exhibit 52, the figures representing the O. R. & N. traffic were compiled from the records of that company; and owing to the destruction of the S. P. records the figures for the S. P. and N. P. were obtained from the Comptroller of the N. P. This information is given just as it was obtained from the N. P. I understand that the term "Competitive points" used in respect to such information relates to points served by some other road than the N. P., which could reach San Francisco over its own rails, or over its connections. This detail, shown by Defend-

ants' Exhibit 52-A, supplemental, is identical with the later part of Defendants' Exhibit 52, beginning with the italicized heading, "Tonnage and freight revenue," etc. (ante pp. 532-533.)

Referring to Defendants' Exhibit 53, the figures for the S. P. Gulf routes, in respect both to Colorado and Utah, were compiled from the Company's records at New Orleans. The supplemental statement as to Utah points is Defendants' Exhibit 53-A Supplemental, and as to Colorado points, 53-B Supplemental, the same being as follows:

(4583) DEFENDANTS' EXHIBIT 53-A, SUPPLEMENTAL.

(Stebbins)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business from and to Utah points, for fiscal year ending June 30th, 1900.

NORTH BOUND.

Tons	Ship Revenue	Rail Revenue	Total System Revenue
180	$269.59	$210.98	$480.57

SOUTH BOUND.

1,632	$13,093.22	$11,279.69	$24,372.91

TOTAL.

1,812	$13,362.81	$11,490.67	$24,853.48

AUDITOR'S OFFICE,

New York, N. Y., Jan. 12th, 1910.

(Sgd) B. G. BARTHOLOMEW,
Auditor.

(4584) DEFENDANTS' EXHIBIT 53-B, SUPPLEMENTAL.

(Stebbins)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business from and to Colorado points, for fiscal year ending June 30th, 1900.

NORTH BOUND.

Tons	Ship revenue	Rail revenue	Total system revenue
6,938	$20,411.08	$15,506.81	$35,917.89

SOUTH BOUND.

Statement of tonnage and revenue accruing to system lines, etc.—Continued.

14,673	$94,391.13	$71,864.13	$166,255.26

TOTAL.

21,611	$114,802.21	$87,370.94	$202,173.15

AUDITOR'S OFFICE,
New York, N. Y., Jan. 12th, 1910.
(Sgd) B. G. BARTHOLOMEW,
Auditor.

Northbound means business to New York, or eastbound business from Utah or Colorado to New York; southbound business is business from New York to Utah or Colorado. In Defendants' Exhibit 53 the figures via U. P. all routes are stated for October, 1906, and April, 1907, taken from the statements compiled by me, introduced in evidence by the Government. The statements X, Y, and Z introduced in evidence are the arithmetical computations made by me. (4585) They are Defendants' Exhibit 54. The statement of the total revenue therein of the S. P. and the U. P. was taken from the records of the companies. The total freight revenue for the U. P. System for the fiscal year ending June 30, 1900, was $28,321,016.06; year ending June 30, 1901, $32,025,792.62; S. P. for same years, $41,220,025.59 and $51,946,343.05.

I have a statement of the Willamette Valley business of the S. P. by the Sunset Route, from the so-called River points, and from points in the Willamette Valley which are not served by boat, covering the fiscal year ending June 30, 1900, compiled from the records of the company in the Auditor's office at New Orleans, and including the detail, station by station, prepared by the Auditor of the S. P.'s lines in Louisiana, Mr. Edwards, who is here. The statement is complete, except that one book of waybills, New Orleans to Oregon points, for August, 1899, is missing from the files, but that would make a very small percentage of difference in the result—in the opinion of the Auditor of the Louisiana Lines, of not more than one per cent. The statement itself, contains an expression "To points served by Willamette River boats," and "To points on S. P. Co. not served by Willamette River boats;" both in the statement of the westbound and of the eastbound business. (4586) The points designated are mentioned station by station in the detail. The westbound statement is Defendants' Exhibit 55-A Supplemental, the eastbound is Defendants' Exhibit 55-B Supplemental; the detail for the westbound, Defendants' Exhibit 55-C Supplemental, and for the eastbound Defendants' Exhibit 55-D Supplemental. They are as follows:

DEFENDANTS' EXHIBIT 55-A, SUPPLEMENTAL.

(Stebbins)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Company—Pacific System, El Paso, Texas, and New Orleans, Louisiana, from Eastern Territories as specified below, for fiscal year ending June 30, 1900.

From—	Tons Carried	S.P.Co. Freight Revenue
Chicago and Common Points Territory	.3	9.32
Cincinnati, Detroit and Common Points Territory	1.9	37.19
Pittsburg, Buffalo and Common Points Territory	.6	13.45
New York, Boston and Common Points Territory	196.4	6,091.36
Total	199.2	6,151.32
To points served by Willamette River Boats	139.5	3,872.02
To points on S.P.Co. not served by Willamette River Boats	59.7	2,279.30
Total	199.2	6,151.32

NOTE.—One book of waybills from New Orleans to Oregon points for August 1899 is missing and this statement is incomplete to the extent of the traffic covered by such waybills.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

(4587)

DEFENDANTS' EXHIBIT 55-B, SUPPLEMENTAL.

(Stebbins)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Company—Pacific System, El Paso, Texas, and New Orleans, Louisiana, to Eastern Territories as specified below, for fiscal year ending June 30, 1900.

To—	Tons Carried	S. P.Co.Freight Revenue
Cincinnati, Detroit and Common Points Territory	151.9	3,226.46
Pittsburg, Buffalo and Common Points Territory	39.9	765.36
New York, Boston and Common Points Territory	3,792.2	88,747.78
Total	3,984.0	92,739.60
From points served by Willamette River Boats	1,457.5	34,967.76
From points on S. P. Co. not served by Willamette River Boats	2,526.5	57,771.84
Total	3,984.0	92,739.60

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor, Union Pacific System and Southern Pacific Co.

DEFENDANTS' EXHIBIT 55-C, SUPLEMENTAL.

(Stebbins)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Company—Pacific System, El Paso, Texas, and New Orleans, Louisiana, from Eastern Territories as specified below, for fiscal year ending June 30, 1900.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
From Chicago and Common Points Territory to—				
Newburg	0.1	1.81	.....	.....
Salem	0.1	1.96	.....	.....
Eugene	.....	.....	0.1	5.55
Total	0.2	3.77	0.1	5.55
From Cincinnati, Detroit, and Common Points Territory to—				
Oregon City	1.3	22.24	.....	.....
Salem	.3	9.35	.....	.....
Hillsboro	.....	.....	0.1	1.93
Lebanon	.....	.....	0.1	1.87
Turner	.....	.....	0.1	1.80
Total	1.6	31.59	0.3	5.60
From Pittsburg, Buffalo, and Common Points Territory to—				
Corvallis	0.2	5.23	.....	.....
Eugene	.....	.....	0.4	8.22
Total	0.2	5.23	0.4	8.22
(4588)				
From New York, Boston, and Common Points Territory to—				
Albany	27.2	985.71	.....	.....
Corvallis	4.2	184.37	.....	.....
Independence	.6	24.59	.....	.....
Newburg	.3	10.64	.....	.....
Oregon City	62.4	1,613.03	.....	.....
Salem	42.8	1,013.09	.....	.....
Aumesville	.....	.....	0.1	6.43
Brooks	.....	.....	0.1	3.38
Brownsville	.....	.....	2.6	100.04
Car Shops	.....	.....	.4	3.03
Cottage Grove	.....	.....	2.4	108.03
Carlton	.....	.....	.1	2.40
Dilley	.....	.....	.1	7.42
Derry	.....	.....	.1	2.50
Dallas	.....	.....	21.3	716.70
Eugene	.....	.....	17.7	710.38
Forest Grove	.....	.....	.1	2.90
Gervais	.....	.....	0.1	8.10
Hillsboro	.....	.....	4.7	172.07
Harrisburg	.....	.....	1.0	39.33

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
From New York, Boston and Common Points Territory to—Contd.				
Halsey	.....	.....	.5	23.85
Hubbard	.....	.....	.1	5.20
Irving	.....	.....	.3	14.30
Jefferson	.....	.....	.1	3.15
Lebanon	.....	.....	2.1	102.65
McMinnville	.....	.....	3.1	138.74
Mt. Angel	.....	.....	.2	7.38
McCoy	.....	.....	.1	2.45
Monmouth	.....	.....	.3	12.20
Natron	.....	.....	.1	2.60
Reidsville	.....	.....	.2	10.03
Scio	.....	.....	.1	2.60
Silverton	.....	.....	.1	2.60
Turner	.....	.....	.1	2.60
Woodburn	.....	.....	.7	46.87
Total	137.5	3,831.43	58.9	2,259.93
Grand Total	139.5	3,872.02	59.7	2,279.30

NOTE.—One book of waybills from New Orleans to Oregon points for August 1899 is missing and this statement is incomplete to the extent of the traffic covered by such waybills.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Co.

(4589)

DEFENDANTS' EXHIBIT 55-D, SUPPLEMENTAL.

(Stebbins)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Company—Pacific System, El Paso, Texas, and New Orleans, Louisiana, from Eastern Territories as specified below, for fiscal year ending June 30, 1900.

	From points served by Willamette River boats		From points on S.P.Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
To Cincinnati, Detroit, and Common Points Territory from—				
Albany	12.1	162.02	.....	.....
Corvallis	15.9	369.08	.....	.....
Independence	4.2	88.12	.....	.....
Oregon City	5.5	170.38	.....	.....

***Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), etc.*—Continued.**

	From points served by Willamette River boats		From points on S.P.Co.not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
To Cincinnati, Detroit, and Common Points Territory from—Contd.				
Salem	60.0	1,178.38		
Aurora			15.9	383.65
Gervais			1.2	24.93
McMinnville			7.4	143.53
Mt. Angel			.1	2.88
Pratum			.1	4.43
Reidsville			10.3	242.11
Sherwood			2.1	48.19
Tauchmans			4.9	103.22
West Stayton			.4	13.79
Woodburn			11.8	291.75
Total	97.7	1,967.98	54.2	1,258.48
To Pittsburg, Buffalo, and Common Points Territory from—				
Albany	2.8	58.54		
Independence	11.8	199.83		
Newburg	.1	1.40		
Oregon City	1.5	45.45		
Salem	13.0	235.95		
Dallas			.8	13.91
Gervais			8.9	189.50
Woodburn			1.0	20.78
Total	29.2	541.17	10.7	224.19
To New York, Boston, and Common Points Territory from—				
Albany Junction	120.3	2,394.73		
Butteville	15.2	402.52		
Cane Landing	1.6	42.51		
Corvallis	50.6	1,034.64		
Champoog	1.6	41.95		
Dayton	9.6	216.78		
Gearin Landing	5.4	140.80		
Herris Landing	2.3	31.59		
Independence	254.0	5,554.30		
New Era	4.5	120.22		
Newburg	19.4	464.26		
Oregon City	118.0	3,971.64		
Reeds Landing	15.6	177.85		
Steamer Pomona	4.2	65.08		
Salem	673.3	16,907.40		
Steamer Elmore	21.5	578.55		
(4590) Steamer Gypsy	.5	13.47		
Wilsonville	9.8	263.58		
Wheatland	3.2	36.74		
Airlee			12.7	198.14
Amity			18.8	153.57
Aumsville			.1	2.05
Aurora			69.0	2,016.54
Ballston			58.0	1,370 46
Barlow			1.5	20.57

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), etc.—Continued.

	From points served by Willamette River boats		From points on S.P.Co.not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
To New York, Boston, and Common Points Territory from—Contd.				
Bertha			7.8	216.33
Beaverton			3.8	80.11
Brant			1.6	38.06
Broodmead			.9	10.54
Brownsville			.1	11.48
Brooks			119.1	2,221.04
Canby			137.5	4,052.67
Carlton			67.5	1,631.54
Cornelius			20.5	553.09
Crowley			11 7	243.73
Creswell			12.4	271.52
Dallas			520.9	9,327.82
Derry			79.6	1,897.78
Dundee Junction			14.5	379.38
Downs			47.9	1,065.87
Eugene			82.0	2,118.34
Fairgrounds			11.1	291.84
Forest Grove			36.2	833.97
Galbreath			9.3	241.77
Gaston			29.8	784.69
Gervais			70.3	1,841.05
Goshea			16.3	489.15
Harrisburg			13.6	374.65
Hillsboro			33.8	867.09
Hubbard			59.5	1.764.24
Jefferson			11.4	339.31
Jefferson City			1.0	32.29
Lafayette			20.8	521.43
Lebanon			38.8	658.03
Lincoln			10.0	248.45
Macleay			3.1	87.53
Marion			1.7	44.26
Middleton			4.6	121.82
Monmouth			21.0	406.07
Morgan			.2	2.17
McKee			14.0	318.63
McCoy			22.7	491.24
McMinnville			48.5	765.89
Mt. Angel			34.2	880.90
Natron			.1	2.05
North Yamhill			205.6	5,160.28
Perrydale			7.9	156.78
Pratum			4.3	99.15
Reidsville			28.7	776.02
Sherwood			16.7	437.08
(4591) Sheridan			75.8	1,375.81
Shaw			4.5	72.30
Silverton			48.8	1,173.07
Spring Brook			19.4	364.51
Springfield			.1	2.16
Simpson			26.2	524.77
Switzerland			7.1	191.41
Surver			8.8	131.31

Statement of total freight traffic from points in Willamette Valley, Oregon, (excluding Portland), etc.—Continued.

	From points served by Willamette River boats		From points on S.P.Co.not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
To New York, Boston, and Common Points Territory from—Contd.				
Turner	.....	.....	4.1	79.43
Tuckers	.....	.....	8.2	217.27
Whitson	.....	.....	7.1	133.40
West Stayton	.....	.....	2.8	115.82
Woodburn	.....	.....	185.6	4,989.45
Total	1,330.6	32,458.61	2,461.6	56,289.17
Grand Total	1,457.5	34,967.76	2,526.5	57,771.84

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

Referring to Defendants' Exhibit 47, and the statement therein of the estimated average monthly tonnage of the S. P. 2,120 that was an estimate made by Mr. Stubbs, the tonnage being estimated at 50 per cent. more than the steamship tonnage. It is evident that his figures were based upon the total tonnage, taking out only the tonnage to San Francisco from Oregon City amounting to 20,104 tons. The first factor, then, would be the total tonnage to and from the Willamette River points, 37,066; the second factor is the 20,104, and third factor is the 50 per cent.

(4592) The first page of Defendants' Exhibit 45 refers only to outward bound traffic to the Orient. It does not show the earnings of the steamships on the Pacific Ocean. The second sheet, headed "Asiatic Traffic, Volume U. P. and S. P. Revenue for the year ending June 30, 1901, movement outward and inward" shows the movement both ways through both ports, San Francisco and Portland, including rail revenue but not steamships on the Pacific Ocean. Exhibit 45 referred only to traffic—S. P.—via the Sunset-Gulf route. The statement of traffic to and from the Orient via San Francisco includes—as shown in the heading of the statement—traffic from and to points on the Missouri River, and common points territory, and points east thereof, via the C. M. & St. P. and the C. & N. W., via U. P., Ogden, and S. P. Pacific System. On the first page of Defendant's Exhibit 45, S. P. revenue by the Sunset Route is $24,789.92, year ending June 30, 1900; the next page of this exhibit is for the year ending June 30, 1901. On Defendants' Exhibit 45-C Supplemental, the S. P. revenue, $146,872, for the year ending June 30, 1901, is revenue accruing only by the Ogden route.

(4593) I have no showing here of the S. P. Sunset revenue for the year ending June 30, 1901. The figures were made up S. P. Gulf

route for 1900, and these others for 1901—I know of no reason for this except that we made up just what was requested by the attorneys or by Mr. Stubbs.

"MR. DUNNE. I will state, Mr. Severance, that the request on the New Orleans Auditor seems to have been addressed to the fiscal year ending June 30, 1900; and in the Union Pacific office I think in most cases it was the year ending June 30, 1901." Referring to Defendants' Exhibit 46, traffic between San Francisco and Portland, volume and U. P. and S. P. earnings for year ending June 30, 1901, showing $217,055.55 as the O. R. & N. earnings, and $110,691.80 as the S. P. earnings—this is local business, San Francisco and Portland, not including business in the Willamette Valley or beyond Portland, or to points in California or other places beyond San Francisco.

(4594) In arriving at the business excluded as non-competitive in Defendants' Exhibit 47, all business to the Oregon City paper mills, both from and to San Francisco, amounting to about $63,000, being the traffic between the paper mills and San Francisco, was excluded. As stated in note 3, at the foot of the Exhibit, the non-competitive traffic from other points deducted covers traffic from N. P. and Columbia River points via Portland. I do not happen to know why Columbia River points and traffic to Salt Lake was treated as noncompetitive. In Defendants' Exhibit 47-A Supplemental, the item of Average Earnings per month $12,196.50, via S. P., is Mr. Stubbs' estimate, including only San Francisco business, the S. P.'s proportion of the hop movement, for example, to Boston or New York, moving by Ogden, being given in other exhibits.

(4595) The traffic covered by Defendants' Exhibit 48 originates in Portland locally, and the traffic from Portland to Ogden via the S. P. is excluded on account of the destruction of records —only eastbound business is included. Defendants' Exhibit 49 is to and from Portland proper. The S. P. part of the statement was made up by the New Orleans Auditor, who audits all the business east of El Paso—through business. This statement shows the Sunset Route; not the business to and from Portland, and the specified eastern territories moving S. P. by Ogden. Defendants' (4596) Exhibit 49 includes all traffic from the eastern territories named therein—between those territories and Portland, by the Sunset Route. The first part of the heading of Defendants' Exhibit 50 should be disregarded; it is intended to show all business between Portland and points on and east of the Missouri River; and the information was received from the General Auditor of the D. & R. G., who, as I recollect it, was unable to separate the business by territories. Defendants' Exhibit 51, hops and wool to the east—mainly Atlantic Seaboard—from Portland to Missouri River and east, includes only the traffic of Portland proper.

(4597) Defendants' Exhibit 52—traffic between San Francisco and Montana and Idaho points, including eastern Oregon, Washington and British Columbia, served by Northern Pacific and com-

peted for—for the service between San Francisco and Portland—by the S. P. and the O. R. & N. for 1900—is the calendar year, via S. P.-N. P., and the fiscal year ending June 30, 1900, via O. R. & N. It does not include S. P. business by way of Ogden to Montana points, or moved to Portland by rail, and then turned over to the O. R. & N. for distribution at local points on the O. R. & N., but relates to S. P. revenue on business interchanged with the N. P. at Portland. As shown by the headings of the columns, the O. R. & N. revenue is only the steamship revenue, not the rail lines. (4598) Defendants' Exhibit 53, with detail, includes S. P. ship revenue to the Gulf from New York, or conversely, and rail revenue Gulf to Fort Worth; and U. P. revenue either from the Missouri River or from Denver, in case of Utah business, if they have any, or business destined to the Colorado and Utah common points. The U. P. revenue, owing to loss of records, could not be given for the period in 1900 to which the S. P. revenue relates, and is shown to October, 1906, and April, 1907, taken from the statements made up at the Government's request. I have a revised statement of Defendants' Exhibit 54, marked "Defendants' Exhibit 54-A Supplemental," as follows:

(4599)

DEFENDANTS' EXHIBIT 54-A, SUPPLEMENTAL.

(Stebbins)

"X"

SOUTHERN PACIFIC COMPANY.

Total Operating Revenue.

Fiscal Year Ending June 30, 1909	$63,920,414.22
Average per month	5,326,701.19
Fiscal Year Ending June 30, 1901	$77,244,898.18
Average per month	6,437,074.85

	Southern Pacific		Southern Pacific (3)	Relation of earnings (2) to total revenue (3), percentage (4)
	Monthly average			
	Tons (1)	Dollars (2).	Total revenue average per month	
A	91	$2,066	$6,437,074.85 (1901)	0.032
B	2,156	9,224	" "	0.143
D	2,120	12,196	" "	0.189
E	238	1,680	" "	0.026
F	261	4,680	$5,326,701.19 (1900)	0.088
G	225	2,204	" "	0.041
H	Included in "F."		" "	
I	200	1,070	" "	0.020
J	Unimportant.		" "	
K	Utah 151	2,071	" "	0.039
	Colo. 1,801	16,848	" "	0.316
				0.894

(4600) "Y"

UNION PACIFIC COMPANY.

Total Operating Revenue.

Fiscal year ending June 30, 1900.....$39,147,697.33
Average per month.....3,262,308.11
Fiscal year ending June 30, 1901.....$43,538,181.01
Average per month.....3,628,181.75
October, 1906, and April, 1907.....$13,388,623.57
Average per month.....6,694,311.79

	Union Pacific		Union Pacific (3)	Relation earnings (2) to total revenue (3), percentage (4)
	Monthly average			
	Tons (1)	Dollars (2)	Total revenue, all sources, average per month	
A	22	$87	$3,628,181.75 (1901)	0.002
B	6,392	18,088	"	0.499
D	573	3,593	"	0.099
E	2,295	18,389	"	0.507
F	2,717	49,324	3,262,308.11 (1900)	1.511
G			Included in "F2"	
H			" "	
I	1,421	3,270	3,262,308.11 (1900)	0.100
J			Unimportant.	
K { Utah	4,738	47,620	6,694,311.79 (1907)	0.712
K { Colo.	1,226	16,399	"	0.245
				3.675

"Z"

UNION PACIFIC AND SOUTHERN PACIFIC.

Total Operating Revenue.

Fiscal year ending June 30, 1900.....$103,068,111.55
Average per month.....8,589,009.30
Fiscal year ending June 30, 1901.....$120,783,079.19
Average per month.....10,065,256.60

COMBINED.

	Sou. Pac. and Un. Pac.		Sou. Pac. and Un. Pac. (3)	Relation earnings (2) to total revenue (3) percentage (4)
	Monthly average			
	Tons (1)	Dollars (2)	Total revenue average per month	
A	113	$2,153	$10,065,256.60 (1901)	0.021
B	8,548	27,312	"	0.271
D	2,693	15,789	"	0.157
E	2,533	20,069	"	0.199
F	2,978	54,004	8,589,009.30 (1900)	0.628
G	225	2,204	"	0.026
H			Included in "F."	
I	1,621	4,340	8,589,009.30 (1900)	0.051
J			Unimportant	
K { Utah	4,889	49,691	8,589,009.30 (1900)	0.577
K { Colo.	3,027	33,247	"	0.387
				2.317

(4602) The statements showing movement in and out of Portland proper include Albina, which is a station in Portland within the city limits. (4602) I have a statement of Oriental traffic by Portland east and west bound, for year ending June 30, 1900, Defendants' Exhibit 45-G Supplemental, as follows:

DEFENDANTS' EXHIBIT 45-G, SUPPLEMENTAL.

(Stebbins)

Statement of Tons Carried and Freight Revenue of the Union Pacific System on Westbound Freight Traffic between the Orient and various Eastern Territories via Portland, Oregon, for the fiscal year ending June 30, 1900.

From—	Via	Tons Carried	U. P. Sys. Frt. revenue
Missouri River and Common Points Territory	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Mississippi River and Common Points Territory	Granger	191.52	1,794.85
	Salt Lake City		
	Spokane		
	Wallula		
	Total	191.52	1,794.85
Chicago and Common Points Territory	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Cincinnati, Detroit and Common Points Territory	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Pittsburgh, Buffalo and Common Points	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Boston, New York and Common Points Territory	Granger		
	Salt Lake City		
	Spokane		
	Wallula		
	Total		
Total	Granger	191.52	1,794.85
	Salt Lake City		
	Spokane		
	Wallula		
Grand Total		191.52	1,794.85

(4603)

Statement of Tons Carried and Freight Revenue of the Union Pacific System on Westbound Freight Traffic, etc.—Continued

	Total Tons Carried	Gross Operating Revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900	7,380,796	39,147,697.33
Ratio of Westbound Oriental Freight Traffic via Portland to total tons of freight carried by and gross operating revenue of Union Pacific System	0.003%	0.005%

NOTE.—Union Pacific System includes Union Pacific R. R. Co., Oregon Short Line R. R. Co., and rail and water lines of The Oregon Railroad & Navigation Co. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

Statement of Tons Carried and Freight Revenue of the Union Pacific System on Eastbound Freight Traffic between the Orient and various Eastern Territories via Portland, Oregon, for the fiscal year ending June 30, 1900.

To—	Via	Tons carried	U. P. Sys. Frt. revenue
Missouri River and Common Points Territory.	Granger	55.05	$574.14
	Salt Lake City.	.....	.....
	Spokane	168.22	406.44
	Wallula.	68.00	136.08
	Total	291.27	$1,116.66
Mississippi River and Common Points Territory	Granger	147.51	$1,114.02
	Salt Lake City.	.....	.....
	Spokane	113.63	220.18
	Wallula.	148.24	224.27
	Total.	409.38	$1,558.47
Chicago and Common Points Territory	Granger	283.79	$1,878.73
	Salt Lake City.	.....	.....
	Spokane	438.42	1,068.21
	Wallula.	266.96	455.62
	Total	989.17	$3,402.56
Cincinnati, Detroit and Common Points Territory	Granger	24.61	$226.62
	Salt Lake	.....	.....
	Spokane	60.20	124.42
	Wallula.	67.97	130.90
	Total	152.78	$481.94

Statement of Tons Carried and Freight Revenue of the Union Pacific System on Eastbound Freight Traffic, etc.—Continued.

To—	Via	Tons carried	U. P. Sys. Frt. revenue.
Pittsburgh, Buffalo and Common Points Territory	Granger	72.14	$616.89
	Salt Lake		
	Spokane	111.17	227.26
	Wallula	30.57	52.05
(4604)	Total	213.88	$896.20
Boston, New York and Common Points Territory	Granger	1,079.96	$8,297.19
	Salt Lake City		
	Spokane	1,821.26	4,740.83
	Wallula	1,041.50	2,012.85
	Total	3,942.72	$15,050.87
Total	Granger	1,663.06	$12,707.59
	Salt Lake City		
	Spokane	2,712.90	6,787.34
	Wallula	1,623.24	3,011.77
Grand Total		5,999.20	$22,506.70

	Total tons carried	Gross operating revenue
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900	7,380,796	39,147,697.33
Ratio of Eastbound Oriental Freight Traffic via Portland to total tons of freight carried by and gross operating revenue of Union Pacific System	0.08%	0.06%

NOTE.—Union Pacific System includes Union Pacific R. R. Co., Oregon Short Line R. R. Co., and rail and water lines of The Oregon Railroad & Navigation Co. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

Compiled by:

C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

Complainants' Exhibit 211 is a carbon copy of a letter by General Auditor Young of the U. P. and S. P. to General Auditor Murphy of the D. & R. G., requesting statistics, and in response the D. & R. G.'s statistics were furnished us, except as to one statement, for which the statistics were covered by a letter from Traffic Manager Hughes of the D. & R. G. to Mr. Stubbs. This exhibit is as follows:

(4605)

COMPLAINANT'S EXHIBIT 211.

(Stebbins)

U. S. vs. U. P. R. R. Co. et al.—statistics desired. Sep. 1, '09.

MR. E. R. MURPHY,
General Auditor, D. & R. G. R. R., Denver, Colorado.

DEAR SIR: For use in certain suits, our attorneys desire statistics of certain freight traffic carried by the Southern Pacific Company from or to Ogden, in connection with your line.

Owing to the destruction of records by the San Francisco fire, we are unable to secure the information desired from our own records now existing, and I would esteem it a great favor if your company would furnish information of traffic received from or delivered to the S. P. Co.—traffic in one direction only—as follows:

1. Freight traffic originating at Portland, destined to Utah Common Points (except Ogden), Colorado Common Points, and points east, for six selected months, as follows: July, September, and November, 1900; January, March, and April, 1901. Lumber to be shown separately from other traffic. Statement to show tonnage and (if your records show it) S. P. Co. revenue.

2. Freight traffic from Missouri River and points east to Portland (proper) via your line to Ogden and S. P. Co. Ogden to Portland. Statement to show tons carried and S. P. Co. revenue for the fiscal year ending June 30, 1900, for each of the following territories:

New York, Boston and common points.
Pittsburgh, Buffalo and common points.
Cincinnati, Detroit and common points.
Chicago and common points.
Mississippi River and common points.
Missouri River and common points.

3. Hops and wool originating at Portland, destined to Missouri River and east, for the fiscal year ending June 30, 1900. Tons carried and S. P. Co. revenue, to be shown separately for each of the territories specified in Section 2.

My understanding is that all this traffic was covered by through billing; but possibly it may be necessary to obtain some information from the records of your Ogden office of traffic (4606) received or delivered on transfer billing, if such records have been preserved.

The necessities of the case make it important that we should receive this information at the earliest date at which it can be conveniently furnished. We shall be glad to bear any expense that may be incurred in securing the information. Will you kindly inform me as soon as possible whether the information desired is available from your records, and whether you will have it furnished.

Yours truly,

ERASTUS YOUNG,
General Auditor.

CSS S

(4606) B. G. BARTHOLOMEW.

I am the Auditor of the S. P. Atlantic Steamship Lines. Information has been asked as to some years between 1901 and 1906—I carried it down to 1909—for Colorado and Utah business. I have the tables, the Utah Tables, Defendants' Exhibit 229, and the Colorado table, Defendants' Exhibit 230, which are as follows:

(4607)

Defendants' Exhibits 229 and 230 are as follows:

DEFENDANTS' EXHIBIT 229.

(Bartholomew)

SOUTHERN PACIFIC COMPANY—ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business from and to Utah points, for years as shown below.

	Tons	Ship	Revenue	
			Rail	Total
Northbound				
1901	28	$74.70	$36.98	$111.68
1902	1	4.83	8.86	13.69
1903	150	716.92	1,740.36	2,457.28
1904	36	278.75	184.84	463.59
1905	25	194.00	107.44	301.44
1906	19	57.17	39.33	96.50
1907	54	487.23	.....	487.23
1908	.....	2.12	1.86	3.98
1909	7	116.61	39.74	156.35
Southbound				
1901	1,958	19,997.03	15,042.67	35,039.70
1902	3,003	26,684.48	20,816.33	47,500.81
1903	4,308	55,072.69	27,836.77	82,909.46
1904	4,930	41,909.80	22,407.24	64,317.04
1905	8,717	75,963.09	39,158.43	115,121.52
1906	8,371	70,277.51	36,797.37	107,074.88
1907	7,655	63,215.95	24,598.97	87,814.92
1908	4,229	36,085.85	13,489.04	49,574.89
1909	3,802	28,054.56	7,181.98	35,236.54
Total				
1901	1,986	20,071.73	15,079.65	35,151.38
1902	3,004	26,689.31	20,825.19	47,514.50
1903	4,458	55,789.61	29,577.13	85,366.74
1904	4,966	42,188.55	22,592.08	64,780.63
1905	8,742	76,157.09	39,265.87	115,422.96
1906	8,390	70,334.68	36,836.70	107,171.38
1907	7,709	63,703.18	24,598.97	88,302.15
1908	4,229	36,087.97	13,490.90	49,578.87
1909	3,809	28,171.17	7,221.72	35,392.89

ACCOUNTING DEPARTMENT,
New York, N. Y., March 1, 1910.

B. G. BARTHOLOMEW,
Auditor.

(4608)

DEFENDANTS' EXHIBIT 230.

(Bartholomew)

SOUTHERN PACIFIC COMPANY—ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business from and to Colorado points, for years as shown below.

	Tons	Ship	Revenue	
			Rail	Total
Northbound				
1901	20,054	$50,636.44	$38,360.94	$88,997.38
1902	1,223	5,825.57	4,413.31	10,238.88
1903	840	5,611.65	2,853.38	8,465.03
1904	777	5,697.59	3,513.82	9,211.41
1905	1,618	12,083.31	6,943.68	19,026.99
1906	1,304	11,271.99	5,903.02	17,175.01
1907	1,943	16,986.49	5,156.55	22,143.04
1908	1,029	9,567.07	2,690.63	12,257.70
1909	1,501	12,752.39	1,597.87	14,350.26
Southbound				
1901	11,875	89,457.59	67,771.91	157,229.50
1902	11,891	85,367.59	64,672.46	150,040.05
1903	10,621	66,403.41	27,360.95	93,764.36
1904	12,337	94,297.97	52,801.76	147,099.73
1905	15,370	118,043.73	71,129.36	189,173.09
1906	14,506	108,543.10	65,768.02	174,311.12
1907	9,614	73,109.45	32,275.59	105,385.04
1908	9,609	72,752.80	23,737.58	96,490.38
1909	8,609	66,529.54	19,836.36	86,365.90

TOTAL

Year	Tons	Ship	Rail	Total
1901	31,929	$140,094.03	$106,132.85	$246,225.88
1902	13,114	91,193.16	69,085.77	160,278.93
1903	11,461	72,015.06	30,214.33	102,229.39
1904	13,114	99,995.56	56,315.58	156,311.14
1905	16,988	130,127.04	78,073.04	208,200.08
1906	15,810	119,815.09	71,671.04	191,486.13
1907	11,557	90,095.94	37,432.14	127,528.08
1908	10,638	82,319.87	26,428.21	108,748.08
1909	10,110	79,281.93	21,434.23	100,716.16

ACCOUNTING DEPARTMENT,
Pier 25, N. R., N. Y., March 1, 1910.
B. G. BARTHOLOMEW,
Auditor.

(4609) The statements 1898 and 1900—for Sunset business, put in evidence when Mr. Spence was on the stand, were compiled from the records of the Company, and the Portland business includes everything into and out of Portland, including the Columbia

River business. It does not include business south of Portland, the Willamette Valley. The statements for all the years are made up from sources that I am satisfied are correct and I am satisfied the figures are correct.

Plaisted.

(4609) FRANK H. PLAISTED.

Salt Lake. Ass't Gen. Freight Agt. O. S. L.

Resides in Salt Lake City; assistant general freight agent of the O. S. L. (4610) Has been in the railroad business about 25 years. The whole of that time in the general freight office or traveling, soliciting freight for that department. Has been connected with the O. S. L. and U. P. roads since March, 1889. Has been 3 years in the office, traveling for 13 years and another period of 4 years in the office. "I solicited the wool traffic in those states for a number of years. During 1893, 1894 and 1895 I had charge of the railroad shearing corrals in southern Utah, at Milford and Black Rock and Churchhouse switch, also solicited wool business generally in that territory. Those corrals were established for the purpose of securing transient sheep which drifted across the line of the Union Pacific and later went into the D. & R. G. territory or territory between the D. & R. G. and the Union Pacific. My time was occupied during the later part of March and the month of April and part of May in inducing the sheep men to shear at these corrals. That took me, of course, a great deal into the country, on to the desert, to see the sheep men. Later in the season I solicited wool in the ordinary way at various points along the line."

Solicited wool traffic.

Visited sheep men.

Familiar with wool traffic.

Witness became familiar during that period with the sheep business and the wool traffic. Subsequently he went to California in 1896, but returned to Salt Lake territory in March, 1897, and solicited wool business in northern Utah, Nevada, Idaho and Oregon, for the years 1897 to 1905. Since 1905 witness has been in the general freight office at Salt Lake City but has been familiar with the wool business since, as an official of the company. "The wool business is solicited ordinarily very much as any other freight business is solicited; but in southern Utah the Union Pacific Railroad, some years ago, at the time it controlled that line, (4611) adopted the policy of erecting sheep shearing corrals to intercept transient sheep which later drifted into the territory of the D. & R. G. These corrals were at Milford, Black Rock and Churchhouse Switch, and it was necessary in soliciting that business to go on the desert, out into the country, and interview the sheep men, urging to them the advantage of early shearing. That took up part of the month of March, all of April, and along until about the 10th of May. Later in the year we solicited wool all along the line, wherever it was loaded. * * *

Manner of solicitation.

Sheep ranges—winter and summer.

"All the higher mountain country in those states, wherever there is a sufficiency of water and feed, is utilized by the sheep men as a summer range. During the winter these sheep are taken to the lower altitudes, to what we call desert country out there, and kept there until the following spring, when they are re-

turned to the higher mountains or summer range. The movement of these sheep from summer to winter range is in several directions, not necessarily from north to south or east to west, or vice versa, but rather from the higher to the lower altitude. When the winter comes and the snow falls in these higher altitudes, it becomes impossible for them to stay there, and they drift to the lower country, where they stay for the winter. There are summer ranges for instance in the State of Utah, and there are sheep which summer range there and winter range in other parts of the State of Utah. The same is true of Nevada, and the same is true of Idaho, and it is also true that some sheep run occasionally from one state to another. Some of these drives are short, running only 45 to 75 miles, and others run from 150 to 250 miles, according to circumstances."

Desert in winter, mountains in summer.

Witness has taken a railroad map and indicated thereon in a general way some of the leading currents of the movement of sheep from summer to winter range. He has indicated by arrows the movement from the summer range to the winter range. The arrow points toward the winter range; the return movement to the summer range would, of course, be in the reverse direction. It would not necessarily be about on the same lines, but generally in the same direction. "They do not follow any exact beaten trail. You will notice in Central and Southern Utah a movement from points east of the Denver & Rio Grande lines and from points between the Denver & Rio Grande (4612) lines and the present San Pedro tracks out on to the desert country west of the San Pedro; also from points on the D. & R. G. to another country we call the East Desert in that territory, over towards Green River you will notice. Also in Nevada you will see a movement from the Ruby Mountains, south of Halleck and Death to desert country farther south. Also from points just north of the Southern Pacific, say at Grouse Creek and through territory west of that to points south of the Southern Pacific. In Idaho there is also a movement from points north of the Oregon Short Line to desert range south of that line in Idaho. And there is a movement from the extreme eastern part of Idaho and western Wyoming across the southeastern portion of Idaho into northwestern Utah and northeastern Nevada. The map produced by the witness was marked Defendants' Exhibit 231."

Map showing sheep migrations.

There are many other local movements of sheep. The map is typical of some of the main currents of that movement. The sheep quench their thirst upon the desert in the Winter time by eating snow. "And that is the reason that those deserts are available for this purpose in the winter and at no other time. After the sheep leave there in the spring, at the time the spring rains fall there is a growth of vegetation which cures during the summer and remains undisturbed until the return of the herds in the fall. They then live on this vegetation until the following spring, and must leave there when the snow melts off, because there is no water." The line which has tracks nearest to the point where sheep are shorn will

Sheep must leave desert when snow melts.

Shearing points fix route.

Wool shorn on S. P.

secure the wool. There are about 2,000,000 pounds shorn at points tributary to the S. P., Elko and east. This wool comes from sheep that range in Nevada both summer and winter, and a few of them in extreme southern Idaho. (4613) That has been true for many years. Witness had some figures made for 1909, that showed about that number. For the years 1900 and 1901 it would not be much different. The situation is the same now as it was then. Depending on the loading, that represents from 75 to 85 or 90 cars. The

O. S. L. never solicited wool from S. P. territory.

O. S. L. never solicited this business—wool sheared from sheep along the line of the S. P. It has never undertaken in any way to get this business. There was no way in which it could obtain it. There were no inducements which they could have offered to induce the sheep owners to drive the sheep to points on the O. S. L. to be sheared. The sheep from which this wool that witness mentioned as tributary to the S. P. comes, never go near O. S. L. territory, nor could they be induced to go near O. S. L. territory, with the exception of a very few which summer in the mountains in the neighborhood of Brigham. That wool would not amount to over 2 or 3 cars. Brigham is on the O. S. L., 20 miles north of Ogden.

In giving the amount of wool sheared along the line of the S. P., the wool from sheep summered in Idaho along or north of the O. S. L., and wintered in Utah and Nevada at points south of the

Sheep which cross S. P. tracks.

S. P. tracks has not been included; because the sheep which summer on or north of the O. S. L. and winter in the country south of the S. P., when crossing the S. P. rails on their way to the summer range in the spring, have a drive before them of from 150 to 250 miles. This brings the time of crossing the S. P. tracks entirely too early for them to shear with safety; the weather is too cold at that time and the drive is too long. Heavy losses would be certain to result if it was attempted. Furthermore, the wool brings 2 or 3

No inducements could be offered.

cents per pound more on the O. S. L. It would not be possible for the S. P. to offer inducements to persuade the owners of the sheep that witness has described, to shear them along their line. No inducements could be offered, because it is too dangerous. They would be certain to lose a large proportion of their sheep if they

Amt. of wool from Idaho.

took the wool off from them that early in the year. (4614) Between 22 million and 23 million pounds of wool are shorn annually along the O. S. L. in southern Idaho. It has varied somewhat from year to year. It is heavier now than it was years ago. It has averaged about what it is for the past five or six years.

S. P. could not get wool from O. S. L. territory.

It was never possible for the S. P. to secure any of the wool traffic from sheep sheared along the railroad of the O. S. L.; because as already explained, the sheep sheared along the O. S. L., at the time they crossed the S. P. tracks (supposing that they have wintered south of the S. P.) cross the S. P. tracks too early; it would be too cold and too dangerous for a man to take the wool off his sheep at that time of the year. Now, if you have in mind any teaming of wool from the O. S. L. after it has been shorn at some point near there,

the distance is entirely too great, and the expense of teaming would be too great. The S. P. could not secure that business.

Sheep between S. P. and O. S. L.

It was never possible for the O. S. L. to secure any of the wool traffic from sheep sheared along the railroad of the S. P. in northwestern Utah and northeastern Nevada; because those sheep never go to the vicinity of the O. S. L. The distance is too long and the expense would be too great to have it teamed over. "Q. Are there any sheep between the Oregon Short Line and the Southern Pacific, which might gravitate to the one or the other according as inducements might be offered? A. There is some shearing done in there, but at points that are much nearer to one track or the other, according to the location of the range. There are about 125,000 pounds or something like that amount shorn in the Oakley and Albion country, that it has been claimed was competitive—but it is not. * * * It is too close to the Oregon Short Line."

The Oakley and Albion country is in what is called the Goose Creek country; it is south of Burley, on the present Twin Falls branch or south of Minnedoka or Kimama on the old main line. Five or six cars of that wool used to come in to those points. Witness supposes it comes in now to points on the Twin Falls branch, as that would be shorter. (4615) The haul from the same territory over to the S. P. would be considerably longer; he doesn't know exactly how much—he has never been in that country. The wool shorn in that locality, that he has just described, represents about 5 or 6 carloads. It was not a sufficient volume to justify solicitation. Nobody ever solicited it, except that it has been solicited for routing east after it reached the railroad.

Sheep along San Pedro and Rio Grande.

There are a large number of sheep shorn in southeastern and southwestern Utah along the lines of the San Pedro and D. & R. G. Witness would estimate the volume of the wool traffic from that territory at about 9,000,000 pounds. That has been true for a number of years. The wool business from Utah to-day is rather lighter than formerly. He doesn't think there is as much wool in Utah as there was in 1900 and 1901. Although it would be a guess on his part, he doesn't think there is as much in this particular part of Utah now as compared with then. The factors which determine the routing of the wool originating in that territory are the same there as elsewhere. The point where it was shorn. It would be loaded on the line of road nearest which it was shorn.

East and west migration in Utah.

Sheep migrate in an easterly and westerly direction to the lines of the San Pedro and Rio Grande railroads in central or southern Utah. There is a large migration of sheep from central Utah to southeastern and southwestern Utah. This southwestern movement on to what is called the west desert or Escalante desert, takes them across the San Pedro tracks. From the point they cross those tracks on their return to the summer range, their drive is about 25 to 75 miles to the lambing grounds, and a great many of these sheep are shorn at the railroad corrals along the San Pedro, during April and early May. The San Pedro secure probably 2 million pounds of

wool there that otherwise they might not get, by maintaining these corrals. Only the San Pedro and the D. & R. G. and their connections compete for this wool traffic originating in territory south of Salt Lake City. The wool has to be loaded on one of those lines.

San Pedro and D. & R. G. only competitors.

It was never possible for the S. P. to secure any of the wool traffic from this territory; (4616) because the S. P. does not reach that territory. It is at least 200 miles from the nearest point on the S. P. to this southern Utah winter range; and the sheep that winter-range there summer-range in eastern or southern Utah, in an entirely different direction. No inducement that the S. P. could offer would justify them in going so far out of their way. To understand that situation, it must be remembered that all the available range suitable for summer or winter, in that country, is occupied. The herds move from summer to winter range and back, year by year, but they return continually to the same locations. A man who summer-ranged his sheep in eastern or southern Utah would not take them 200 miles north to the S. P. and back; that would be entirely out of his track. In order for a railroad to secure wool in the manner I have described, the sheep must be shorn in transit on a track that they cross in their regular line of travel back to the summer range. The S. P., therefore, could not secure that business, because they are out of the track of travel. The S. P. has made no efforts whatever to secure the routing of wool from territory south of Salt Lake.

Railroads maintain corrals.

As to the inducements the San Pedro and Rio Grande roads have offered, in their efforts to secure the wool traffic from this territory—the San Pedro still maintains the corrals at Black Rock and Milford which was erected by the U. P. and they have also built new corrals at Lund and Modena; and, witness understands another one on their Fairfield branch, west of Lehigh Junction, between Lehigh Junction and Tintic. The corrals were built by the railroads in a suitable manner for shearing sheep, and furnished free to the sheepmen, to induce the shearing of these transient herds. The S. P. has never offered similar inducements to secure the shearing of sheep along its line west of Salt Lake City; because the only sheep that would be shorn in corrals on the S. P., if they were provided, would be sheep which would be shorn in that vicinity anyway. They could not secure any transient sheep there that drift later into any other territory, and for that reason they have never furnished any of those facilities.

Why S. P. does not.

Salt rates.

(4617) Referring to the testimony of Mr. Love, at Salt Lake, in this case, in regard to a reduction in rates on salt having been made by the O. S. L. to induce the routing of wool over that railroad as against the S. P., he mentioned a rate which he said Mr. Eccles told him was made to Minnedoka for the purpose of having sheep driven to that station. "That rate was made—I do not recall the exact figure—but there was a reduction made on stock salt in the year 1893, at the time the sheep industry was in very bad condition on account of the Wilson bill. Wool had been placed or was about to be

placed on the free list, and there was a tremendous drop in prices. This rate on stock salt was one feature of a number in a policy of encouragement to sustain the wool industry. Mr. Eccles reduced the rate on wool at that time, from Idaho; made some rates on wool bags and other things. The rate on salt was made not only to Minnedoka but to most all other stations in Idaho, and had nothing to do with the driving of sheep from any territory."

McCarthy's testimony.

Witness heard Mr. McCarthy's testimony at Salt Lake, in this case, in regard to the wool traffic from territory adjacent to Salt Lake. He was acquainted with Mr. McCarthy when the latter was connected with the U. P. at Salt Lake City. Witness was traveling freight agent out of the same office. The course of McCarthy's duties did not bring him into close association with the wool traffic. He was contracting freight agent on the street. He attended to the city business there, soliciting merchandise. He did not go into the country, and would not know anything about these matters. Witness thought McCarthy confused the situation in northern Utah and Nevada and Idaho with the one in southern Utah. The latter knew that this migration of sheep occurred, and probably confused it.

McCarthy not familiar with wool business.

Babcock's testimony.

Witness heard Mr. Babcock's testimony in Salt Lake. (4618) He used to be connected with the D. & R. G. He remembered Mr. Babcock giving the following testimony (Vol. 6, p. 2390-1): "Q. At the time the Union Pacific system was separate in management from the Southern Pacific system what was the fact as to whether there was any competition for wool shipments out of any of this territory, between those systems? A. The competition in wool commenced very early in the season—before it was taken off the sheep's back. Q. Explain that whole situation. A. The Oregon Short Line people endeavored to attract the sheep away from the line of the Southern Pacific west of Ogden; on the part of the Union Pacific they tried to attract it away from us to Ogden by trailing the live sheep into western Wyoming, and in southern Utah we did our part towards trying to attract sheep over on to our line, away from the Oregon Short Line, and letting them be sheared on our line. * * * Q. Do you think that Mr. Babcock was mistaken, as well as Mr. Love and Mr. McCarthy? A. I know that they were mistaken. * * * Mr. Babcock was correct as to southern Utah, and incorrect as to northern Utah and Nevada. Q. That is, he was correct as to competition where the Southern Pacific and the Oregon Short Line were not two competing lines? A. That is where he was correct, yes, sir." Boston is one of the great wool markets—the largest in the United States. St. Louis is a very large wool market. (4619) Wool taken up primarily by the Rio Grande in witness' country can move all rail, or boat and rail to Boston. In late years it ordinarily moves all rail. The same was true in 1900 or 1901. Counsel reads from the testimony of Mr. Babcock, relating to the period previous to 1901, to the effect that when the D. & R. G. secured wool shipments it was moved sometimes all rail but quite largely rail and ocean. When moved the latter way it was delivered

They were mistaken.

Wool markets.

to the ocean carrier at Galveston largely. WITNESS. "Well there was a time back about 1893, 1894 and 1895 when the price of wool was very low; when there was a great deal of wool moving ocean and rail out of that territory, by Galveston, and by other water lines. But later on, when its prompt movement became more important to the buyer it mostly moved all rail. I think along about 1893, 1894 and 1895 Mr. Babcock's statement would be correct; there was considerable movement rail and water."

Movement via Galveston.

All rail time shorter.

(4620) The time to New York and Boston by all rail in those days was shorter than by rail and water; because the sheep men or the buyers of wool were willing to pay more money to have it sent that way. He does not think they would have paid it if the time had not been shorter. There may be some wool movement that way (water and rail via the Gulf) but there is very little. Witness would not say that it had ceased in 1900 and 1901, but it was very much smaller. When the Rio Grande secured that business and sent it by rail and water, witness doesn't know whether they chiefly worked the Morgan Steamship Line from Galveston to New York,—possibly they did. They also worked Mallory, he thought. Some of the wool that was sheared along the line of the S. P. in western Utah and northeastern Nevada moved to the seaboard by the Sunset Route and some of it moved U. P. (4621) Witness does not know how it was divided. Some went both ways, but he cannot give the proportions. As far west as Elko on the S. P. there would be about 75 to 90 carloads of wool. The rate to Boston was about $2.00 a hundred or a little more than that. The all-rail rate to Boston is now $2.13. 2,000,000 pounds would afford a revenue of $40,000 for all lines.

Very little moves via Gulf.

Sunset route.

"Q. * * * Now do I understand from you that there were absolutely no sheep that were competitive—I mean the wool, the shear of the sheep, that was competitive in northern Nevada, southern Idaho and northern Utah, as between the Short Line on the one hand and the Southern Pacific on the other? I understood you to testify that there was absolutely none. Is that correct? A. You understand me so with the exception of about 3 cars of wool (I don't know just how many sheep that would represent) from sheep that Summer in the mountains back of Brigham, Utah." (4622) Up in Idaho witness was soliciting wool in competition with the D. & R. G. They reached up there in connection with the O. S. L. at the time witness solicited there. That gateway was opened in the Spring of 1897. It stayed open until about 1905. Previous to 1897 "that was our local territory at that time." Prior to 1897 witness did no solicitation of sheep men in that region; there was no occasion to. These three gentlemen who testified out there about the business being competitive are all three absolutely mistaken so far as that part of the country is concerned.

Only about 3 carloads of wool competitive.

(4623) Witness never heard of any sheep being driven over into Wyoming as referred to by Mr. Babcock, and does not think anybody else did. "Q. So you are not in position to dispute it—

No sheep driven into Wyoming.

because you never heard of it—or do you care to dispute it? A. I will dispute it in this way; that I have been in that territory for 21 years and never heard of that sort of thing being done, and I don't believe it could be done without my hearing of it." The amount of wool traffic in southern and eastern Utah was about 9,000,000 lbs. That includes wool local to the San Pedro, local to the Denver & Rio Grande and competitive between the two. The wool originating along the line of the San Pedro in southern Utah, mostly moved to the east all rail. Some was moved via Los Angeles last year. The San Pedro published the rate by which the wool can be hauled cheaper down to Los Angeles and then sent to Boston than it can go direct from Modena and witness has not heard of the rate being canceled. (4624) The rates on wool to Boston from points on the Southern Pacific in northern Nevada and northern Utah so far as witness knows are approximately the same as the rates by the Short Line and Union Pacific.

Amt. of wool from southern Utah.

Wool rates.

Witness does not think they agreed to a cent. There is a Sunset rate published from that territory which blankets all the sea-board points at one rate, as he recalls it, New York, Philadelphia, Boston, etc. "Our rates from Union Pacific and Oregon Short Line points are different; that is Boston is a slight differential higher than Philadelphia or New York, but the rates are nearly the same." The rates have not been absolutely identical but they have been substantially identical from that whole region.

(4624) JOHN A. REEVES.

Reeves.

Resides in Salt Lake City; general freight agent of the O. S. L. and the S. P. Salt Lake division lines, Sparks, Nevada, and east. (4625) He has held that position since October, 1905. Had been with the O. S. L. many years prior to that—since 1886. He is familiar with the wool traffic from O. S. L. territory including Utah, Nevada and Idaho. The matter has been carefully gone into by Mr. Plaisted in his testimony. The sheep do migrate from the Summer to the Winter range and back again, and there is competition while the sheep are in transit in southern Utah, between the San Pedro now, and the D. & R. G. in southern Utah. The sheep move east from the Nevada deserts to the mountains east of the D. & R. G. tracks. There is no possibility of the S. P. securing any of that wool traffic in southern Utah. It is too far south for them. He has never known of a time when there was a possibility of that company securing any wool traffic from that territory; he has never known of their soliciting wool traffic in southern Utah.

Salt Lake. Gen. Freight Agt. O. S. L.

Sheep migration.

S. P. cannot get wool from Southern Utah.

The sheep from Nevada that range in Idaho move north across the S. P. tracks to the summer ranges on the O. S. L. in eastern and northern Idaho. The sheep are shorn on the O. S. L. in northern Idaho and eastern Idaho; and the wool moves east by the O. S. L. In the Fall the sheep return to the Winter range in Nevada. The S. P. people are not able to secure any of the wool from the sheep crossing their tracks upon their migration from the Summer range

Migration from Nevada to Idaho.

Why S. P. cannot get the traffic.

in Idaho (4226); because they start to move north too early in the season. The sheep summer in Idaho and winter south of the S. P. tracks in Nevada and Utah. The sheep get to their lambing grounds in northern and eastern Idaho, witness thinks early in June, and it is a drive of probably 200 or 225 miles (it varies) and they do not make very many miles per day; they graze as they go along. They leave the Winter range very early in the Spring, perhaps in March; and that would be too early to shear. "Q. What wool are the Southern Pacific people able to secure and have they been, since 1900 along their line west of Salt Lake City? A. The sheep from which wool is shipped from points on the Southern Pacific range both in the winter and in the summer in Nevada either north or south of the Southern Pacific tracks."

Amt. of wool on S. P.

Witness thinks that the extent of that wool traffic for the preceding year was a little over 6,000,000 pounds from points on the S. P. east of Sparks. Sparks is about 300 miles west of Elko and is 550 miles west of Ogden. Witness thinks that the volume of that traffic east of Sparks along the line of the S. P. in 1900 and 1901 was about the same.

O. S. L. could not get wool from S. P. territory.

"Q. State whether or not it was ever possible for the Oregon Short Line to secure this traffic, that is to say, wool sheared from sheep along the line of the Southern Pacific west of Ogden. A. It was not possible in Nevada and not possible in northwestern Utah. It might have been possible around Corinne or Kelton;" because the sheep were shorn in the immediate vicinity of the S. P. tracks, and for the O. S. L. to have secured the wool it would have been necessary to have the wool teamed long distances to the O. S. L. The wool is bought by the dealer from the grower on the basis of so much per pound loaded on the cars; so that the grower has to stand the cost of teaming to the railroad. Therefore, naturally, the nearest railroad point governs him in his selection. The volume of the wool traffic which the O. S. L. might have secured in the neighborhood of Corinne and Kelton was very small, quite nominal; it probably did not amount to more than half as much as a hundred thousand pounds. It would depend on the location of the corral, whether they loaded it at Kelton (4627) or Corinne on the S. P. or at Brigham or Collinston on the O. S. L., just north of Ogden.

Corinne and Kelton wool.

Wool from north of Ogden.

The extent of the wool traffic originating along the line of the O. S. L. just north of Ogden varies from 20,000,000 to 25,000,000 pounds per year. That has been so, as far back as witness can remember. It has never been possible for the S. P. to secure any portion of that wool traffic originating along the line of the O. S. L. The wool is shorn adjacent to the O. S. L., and it would necessitate the teaming of the wool from Idaho across the line and it would be very expensive. In 1893 witness was chief clerk for S. W. Eccles, assistant general freight agent of the Union Pacific, and recalls the circumstances connected with a reduction in the rate on salt made to Idaho for the sheep men. There was "considerable depression that year in the wool and sheep industry and a delegation of the

Salt rate.

Idaho sheep growers came to Salt Lake City and called upon Mr. Eccles asking him for some relief. A reduction was made on stock salt at that time, and other concessions were made. I think there was a heavy reduction granted in the rate on wool to the east, and some other matters." These changes in the rates on salt were not made with the idea of drawing bands of sheep or wool from the S. P. to the O. S. L. Witness never heard that feature of it discussed.

McCarthy not familiar with wool traffic.

Witness is acquainted with Mr. McCarthy of Salt Lake who testified in this case. His duties did not bring him in close touch with the wool business. He was city man in Salt Lake City for the U. P. (4628) The S. P. never met the reduction in the rate on salt to their Nevada points. Their rates on salt to Nevada to-day as witness recalls them are higher than U. P. rates to all points in Idaho. "I understand that not so much salt is required by the sheep when they are on the winter range, on the desert, on account of some peculiar property in the sage brush or weeds on which they live, but in the summer ranges, in the mountains, they require a great deal of salt. The movement of stock salt to Nevada has not been heavy, while to Idaho is has always been."

Southern Utah wool.

Before the merger of the U. P. and the S. P. they were separately represented in Salt Lake, and witness was in the general office of the U. P. there. The S. P. also had a regular soliciting agency there. The S. P. worked neutrally between the D. & R. G. and the U. P. west of Denver. Referring to the wool business originating in southern Utah this question was propounded: "Q. The business that was solicited as was stated by Mr. Plaisted, was subject to competition between the Rio Grande and the Short Line which at that time owned the lines in Southern Utah which are now owned by the San Pedro. I say don't you recall that the Southern Pacific agency in Salt Lake worked with the Denver & Rio Grande in securing that business by way of Galveston? A. I think they did."

NEW YORK CITY, THURSDAY, MARCH 3, 1910.

(4629) ERNEST O. McCORMICK (2)

McCormick.

Asst. Director of Traffic—Harriman lines.

I am, and have been, Assistant Director of Traffic, U. P. and S. P., since 1904. As to my railroad experience: "Beginning with 1877: First, for a short time in the engineering department; then car accountant; then in the freight department, from the making of notices and delivering them, through stationwork up to general agency, general freight office; then general agent of the Fast Freight Line, Great Eastern Fast Freight Line, Louisville, Kentucky; then passenger department Monon Route to general passenger agent of that line; then general passenger agent Cincinnati, Hamilton & Dayton road, Cincinnati; and in 1893 to the Big Four as passenger traffic manager; and in 1899 to the Southern Pacific as passenger traffic manager, headquarters San Francisco; and in 1904 to Chicago as assistant traffic director. * * *

Sunset service in 1900.

"In 1900 the Sunset Route had one daily through train leaving New Orleans in the morning. That train consisted of ordinary equipment, and made the through trip to Los Angeles in very good time considering the features that control traffic along that particular line, which are an arbitrary at New Orleans on account of connections, and at that time an arbitrary at San Antonio on account of deliveries and connections from the north (and which still prevail to a (4630) large extent), on account of El Paso deliveries to the Mexican lines and connections with the necessary arriving at Los Angeles at a reasonable hour of the day and as was then thought a good idea to break the journey and permit a man a few hours at Los Angeles before continuing on to San Francisco. It was considered that that might be possibly a feature of attraction. * * * The train could not leave New Orleans in those days at any other hour and be served by the connections from the east and north; and the arbitraries beyond that I have explained by reason of the connections; and, as they had only the one through train a day it was all-important to those points and to connecting lines that those connections be made. * * *

No 9.

"That was called No. 9. It left New Orleans at 8:15 a. m. (and for convenience I might use the days of the week) say Monday, arrived at San Antonio at 8:45 a. m. Tuesday; left San Antonio 9:15 a. m. Tuesday, arrived at El Paso 8:40 a. m. Central time Wednesday; left El Paso 7:20 a. m. Pacific time Wednesday, arrived at Los Angeles 11 a. m. Thursday; leaving Los Angeles at 11:40 a. m. Thursday, arriving at San Francisco at 7:45 a. m. Friday. That train ran by the San Joaquin valley with arrival at Oakland Pier." The train had the usual head-end cars, coaches, tourist cars, and sleepers, no diner or observation car, meals being taken at stations en route.

Sunset Limited a seasonable train.

The Sunset Limited train was inaugurated in November, 1894, a seasonable train, so styled because it ran for four months of the winter season, leaving New Orleans 10:45, say Monday morning after the eastern and northern connections arrived, reaching Los Angeles 7:45 p. m. Wednesday, and San Francisco 10:45 a. m. Thursday, running at that time through the San Joaquin Valley.

Consist.

(4631) It consisted of one combination baggage, buffet and library car, containing also a bath-tub, and carrying a barber, the car being located next to the engine. The next car was the diner, next a sleeper containing six sections, one stateroom and one drawing-room, next a 14-section drawing-room sleeper, next an observation sleeper with seven compartments, and an observation end, having a lounging room and parlor—for the purpose of economy the forward end of that car contained drawing-rooms or compartments for sleeping. The train was lighted by Pintsch gas.

Schedule of 9 and 10.

(4632) Westbound the train was No. 9, eastbound it was No. 10. "It left San Francisco at 5 p. m. (We will use the same days to designate) say Monday, via Oakland Pier; arrived Los Angeles 1:30 p. m. Tuesday; left Los Angeles 2 p. m. Tuesday, arrived at El Paso 6 p. m. Pacific time Wednesday, leaving at 8:20 Central time Wed-

nesday, arriving San Antonio 7:30 p. m. Thursday, leaving San Antonio 8 p. m. Thursday, arriving New Orleans 6:30 p. m. Friday, in time for eastern connections. The consist of that train was a return of the so-called No. 9. The Sunset Limited left San Francisco at 5 o'clock p. m., say Monday, just preceding No. 10. It was scheduled out at the same time, but the Sunset Limited ran out first and ran away from it. Then the Sunset Limited was the limited train eastbound; but I made that explanation because they were both scheduled out at 5 o'clock. They used the same boat. The Sunset Limited went down ahead of the other train. It went by Oakland Pier and arrived at Los Angeles at 7:30 a. m., Tuesday (whereas you will notice that the other train did not get there until 1:30 p. m.); left Los Angeles 8 a. m. Tuesday; arrived New Orleans 7:20 p. m. Thursday; running the same equipment." On the first train No. 9 they had no observation cars.

Schedule of Sunset Limited.

The Sunset Limited that followed had an observation car. (4633) This is the observation sleeper containing seven compartments. It had no observation car beyond that. "It had a cafe car at the head-end that contained the library, barbers, etc. Now (if I misconstrue your question) we have to-day what we call an observation car which is an entirely different car; it contains no space other than that for the comfortable occupancy of loungers and men who want to play cards and drink. That car is divided into two compartments. Now, this train has no such car as that; that is what I want you to know." The Sunset Limited train ran weekly, November 1, 1894, to April 11, 1895, 74 hours westbound, and 72 hours 20 minutes eastbound; November 5, 1895, to March 16, 1896, semi-weekly; and March 17 to April 16, 1896, weekly, 78 hours 55 minutes eastbound, 77 hours 45 minutes westbound. "The third season, westbound, November 7, 1896, to April 1, 1897 (semi-weekly from November 7 to March 22, and weekly from March 23 to April 1), 76 hours and 45 minutes; eastbound time, 78 hours and 50 minutes. The fourth season, October 18, 1897, to April 28, 1898, semi-weekly. Then an arrangement was made to run the train that season out of Chicago by the Chicago & Alton road, in connection with the Iron Mountain and the Texas & Pacific, and over the Southern Pacific from El Paso, but they had (4634) a quarantine at New Orleans and could not run it via New Orleans. But the time was approximately the same—76 to 77 hours. * * * It ran Chicago & Alton, Iron Mountain and Texas & Pacific via El Paso. The time was approximately the same. That season we could not run it by New Orleans, on account of the yellow fever, as I say."

Sunset Limited ran weekly and semi-weekly.

Quarantine.

The quarantine was raised "December 30th, say, 1897. After the raise in the quarantine, we put on one car and ran it eastbound in connection with this train; that was from a train that we called 19 on the Southern Pacific; running into this train at El Paso. And we carried that through to New Orleans. And westbound we ran it into that train and carried that one car to San Francisco, on

train No. 20. That provided, after the quarantine, the service east of El Paso in this train, which proceeded on to Chicago. Now the fifth season? * * * November 29, 1898, to April 29, 1899, semi-weekly, via the old route. The westbound time, again, was 76 hours, say, and 45 minutes. That is, it was re-established via New Orleans. And eastbound it made a little longer time—79 hours, say, and 30 minutes. In addition, we ran a train that was called the Pacific Coast Limited, out of Chicago.

Pacific Coast Limited.

"That train ran by the route of the Sunset Limited the year previous; that is, the Chicago & Alton, Iron Mountain, Texas and Pacific, and S. P., continued to operate a train out of Chicago by that other route, although the Sunset was on the other way, and the train was of the same character and had about the same running time as the Sunset Limited over that previous route for that previous season. * * * That was discontinued after the first of the year, on notice from the Iron Mountain road and Texas & Pacific that they could no longer run it, could not operate it another season, they having just about made arrangements to rehabilitate their lines and to do a great deal of work building up their lines. That was the reason they gave to us, and we could not go behind that reason, of course."

The Pacific Coast Limited ran just that one season, semi-weekly.

Sunset Limited —better time.

(4635) "The sixth season, December 15, 1899, to April 19, 1900, Sunset Limited, over the old route semi-weekly. That year we tried a little better time. 74 hours. 74 hours westbound, and 72 hours 20 minutes eastbound. The seventh season we put it on earlier—

Tri-weekly.

November 7, 1900, and we ran it to April 25, 1901; tri-weekly from November 7 to April 1, on a 74-hour schedule westbound, and weekly from April 2 to April 25; 72 hours and 20 minutes eastbound schedule. We began operating this train via the Coast Line April 1, 1901. The eighth season, December 2, 1901, to April 21, 1902, we ran it tri-weekly again, changing the date from December 2 to March 31; and weekly from April 1 to April 21. * * * 73 hours and 45 minutes westbound and 72 hours and 20 eastbound.***

"We discontinued that train after the dates given. The eighth season was December 2, 1901, to April 21, 1902, tri-weekly December 2 to March 31 and weekly April 1 to April 21. We began op-

Service not adequate.

erating it via the Coast Line April 1, 1901. After the season was over in 1902, we met as usual to make our arrangements for the fall campaign the next year; and in convention, after intercommunication by wire, letter, etc., of the men best posted in the Southern Pacific and of connecting lines serving this route, it was concluded that the service was not adequate to the needs of the route, and suggestions were made for the improvement of the service via that line, taking into consideration all of the necessities of that line, which were peculiar; arbitrary leaving time at New Orleans, with the subsequent connections, etc., as I have given them to you, westbound, and the disadvantages that we have labored under in having to coax a passenger in the east to arrange his leaving time

from home at a time that would just get him to New Orleans in time to serve our convenience out of New Orleans with this train—we met that particular obstacle up in New England, where people did not want to ride on Sunday, and they would not ride on Sunday, but would leave home on a day that would let them make the journey from the east to the west and not take in Sunday.

"The class of people in New England and the east from which we drew a considerable patronage, were advised that there were other sleepers on other trains via other routes that were cheaper per berth than the sleepers, and afforded good accommodations,—like the tourist sleeper; the difference in rate from New Orleans in that character of car being, I believe, $5.75 for a berth as against $11.50 the other way. So, taking all these things into consideration, recommendation was made that we have daily (4636) service out of New Orleans to the coast, and that that daily service consist of equipment that would serve the needs of the people. I was one of the strong advocates of that daily service and of a little different character from what we had had before, having been located in competitive territory and believing it was necessary to have something of the sort. Again, the train was, to our mind an unpaying train, and its time did not approximate nearly enough that of its competitor—the Santa Fe, which has been strengthening itself since 1894 and 1895. And we believed that by the daily train we could secure more business and make more money, particularly on account of the peculiar class of people that we handled via that route.

Recommended daily service.

"It was the course of least resistance so far as anyone was concerned who was afflicted with organic heart trouble, or heart trouble, or pulmonary complaint, or was weakened to a great degree, it being the line of the lowest altitude. So recommendation was made that a new service be inaugurated and that the attractions of that line be exploited by the expenditure of money in advertising, etc., using New Orleans attractions to secure business that way, and San Antonio, Juarez, Paso del Norte, the old Mexican town at El Paso, and it was possible to stop over at Los Angeles for a few hours, or as long as the passengers wanted on the limit of their tickets, etc."

New service well advertised.

The Santa Fe Route did not "reach New Orleans, San Antonio and El Paso; nor did any other line. That is the reason why we thought it was profitable or would be profitable to run that other train from Chicago—continue that other train down that way, because it did not draw from this particular territory where we drew our business to a great extent, although the Santa Fe did draw some from the eastern territory. So in the fall of 1902 we put on another daily through train. * * * This train ran from November 15, 1902, to July 26, 1903. * * * This is the second train; this is the new train that I was about to describe. * * * In the fall of 1902, I was going to tell you about the new train we were going to put on. * * * The number was 9. We styled it 'Sunset Limited.' It was made up of the usual head-end cars, chair car from New Orleans

New daily Sunset Limited.

to Los Angeles, diner New Orleans to Los Angeles, tourist sleeper New Orleans to San Francisco, compartment sleeper New Orleans to Los Angeles, observation sleeper, New Orleans to San Francisco."

Tourist sleepers.

The tourist sleeper "was carried from the east, as far as Washington, D. C. It ran one day a week from there, on this train; and another day a week one car, similar in construction and design, etc., ran from Cincinnati; and another day in the week that car went from Chicago (4637) via the Illinois Central to New Orleans. Another day we ran one by the M. K. & T., say, from St. Louis, connecting via San Antonio. In other words, we gave the train a maximum service and such equipment as it could carry."

Schedule of new train.

No. 9 left "New Orleans at 11:45 a. m. say Monday; left San Antonio 8:30 a. m. Tuesday; arrived at El Paso at 7 a. m. Wednesday, Central time; left El Paso 5:15 a. m. Wednesday, Pacific time; arrived Los Angeles 7:30 a. m. Thursday; and we left Los Angeles at 12 o'clock noon on Thursday and arrived at San Francisco Friday, consuming 94 hours and 40 minutes approximately." We arrived at 8:25 a. m.

Schedule of return train.

As to the return train, No. 10: "It ran as follows: leave San Francisco 7 o'clock p. m. Monday; arrived at Los Angeles at 12:30 noon on Tuesday; left 2:40 p. m. on Tuesday; arrived El Paso 6 p. m. Wednesday, Pacific time; left El Paso 8:20 Wednesday; Central time; left San Antonio 7:50 p. m. Thursday; arrived New Orleans 6:45 p. m. Friday; 93 hours and 45 minutes. * * * Up to that time we had been serving only the morning connections into New Orleans, either by the old inferior train or by the Sunset Limited, and there was demand on the part of these same men,

Double daily service.

in the same convention that I spoke of, for an attempted double daily service; and we put on double daily service by means of a train called No. 7, leaving New Orleans at night, after the arrival

Pacific Express No. 7.

of the connections. * * * We called that No. 7 * * * the 'Pacific Express.' * * * It left New Orleans 9 p. m., say Monday; arrived San Antonio 5:30 p. m. Tuesday; left San Antonio 5:45 p. m. Tuesday; arrived El Paso 3:50 p. m. Wednesday, Central time; left El Paso 2:10 p. m. Wednesday, Pacific time; arrived at Los Angeles 4:45 p. m. Thursday; left Los Angeles 5:30 p. m. Thursday; arrived at San Francisco 11:35 a. m. Friday. * * * Time 88 hours and 35 minutes. * * *

(4638) "You will note the difference between the former schedule of the train that left in the morning, 93 or 94 hours, and this train was 88 hours. The former train being the higher grade train,

Schedule fitted to the route.

you naturally would think we would run the higher grade train faster than this; but, as I explained to you, the schedule of the higher grade train was fixed in accordance with what we considered the desirabilities, or the exigencies, or the features of the route more nearly. We did not run it any slower than we had to, but we tried to fit it to the route over which it ran. This train, leaving at night, we operated in 88 hours and 35 minutes, and we ran this

train via the San Joaquin Valley from Los Angeles to San Francisco, returning as No. 8, left San Francisco 9 o'clock in the morning, say Monday; arrived at Los Angeles at 6:45 a. m. Tuesday; left Los Angeles 7:30 a. m. Tuesday; arrived El Paso 11:50 a. m. Wednesday, Pacific time; left El Paso 2:10 Wednesday, Central time; arrived at San Antonio 11:50 a. m. Thursday; left San Antonio 12:15 p. m. Thursday; arrived at New Orleans 8:35 a. m. Friday,—consuming 93 hours and 35 minutes. This train also ran down the San Joaquin Valley."

Period of operation—Nos. 7 and 8.

This train ran from "November 15, 1902, to July 26, 1903. * * * 7 and 8. And again from December 16, 1906, to September 1, 1907. * * * I might be permitted to explain that it was with considerable difficulty we got the old schedules, owing to the San Francisco end of it being burned up, and these things not being get-at-able. This train ran from November 15, 1902, to July 26, 1903, and again from December 16, 1906, to September 1, 1907." It was not operated as a through daily train after July, 1903, because of enforced economy in the panic, etc., and it did not go on again as a through daily train until December, 1906. "Beginning with August, 1903, and until December, 1906, it was operated only between New Orleans and San Antonio and between El Paso and San Francisco, with the exception of four months in 1905, when it was cut off between El Paso and Los Angeles; but it was operated during those four months between Los Angeles and San Francisco, as 7 and 8. That is for those four months it was lopped off between El Paso and Los Angeles. * * *

(4639) "From December, 1906, (if you will permit me to go back) until September, 1907, this train was operated as a daily through train between New Orleans and San Francisco, in both directions. It was taken off between San Antonio and El Paso (that big gap in there) after September, 1907—again, account of the panic, and there not being enough through business to warrant it being operated between New Orleans and San Francisco nor enough through business to warrant it being operated over that gap between San Antonio and El Paso, which was absolutely an unproductive country. * * * There is nothing contributing to it at all. It is like a bridge—a steel arch over the dry bed of a river—the desert. There is nothing in it. You have got to lift everything over it. And it always affects the service that way. * * * The present train, 9 and 10, better serves the traveling public, although the time is longer than that of what we call the seasonal Sunset Limited. It is necessarily slower on account of the ampler accommodations and the excess of the connections as compared with that other train, which was extreme in limitations in regard to both of those. * * *

No business contributed between San Antonio and El Paso.

"Westbound, all of No. 9's connections arrive at New Orleans in the morning from 7:50 a. m. until 10:55 a. m. It leaves New Orleans at 11:55 a. m. It is also governed by connections, as I have said before, with other lines en route. * * * At San Antonio with the M. K. & T., from which it takes a through sleeper weekly

Connections of No. 9.

from St. Louis to San Francisco. MR. SEVERANCE. Tourist? WITNESS. Yes, at Spofford, for Mexico and south via Eagle Pass. Q. You mean Old Mexico. A. Old Mexico. And at El Paso again with the Mexican Lines, with the Santa Fe, with the El Paso & Southwestern, and all that mining territory tributary, to which there is now a good travel; at Lordsburg with the Arizona & New Mexico, up to Clifton and Morenci, and all that mining territory; at Bowie with the Gila Valley, Globe & Northern; at Maricopa for Phoenix. It carries a standard sleeper from Tucson to Phoenix and periodically from Phoenix to Los Angeles. By that I mean it is not a daily."

Connection with No. 17 at Los Angeles.

(4640) At Los Angeles it connects with the Santa Fe for San Diego and all branch lines for southern California points. "It arrives at Los Angeles at 1:30 p. m. and connects with train No. 17, leaving there via the Coast Line at 2:35 p. m., which train arrives at San Francisco the following morning at 8:30; thereby reducing No. 9's time, as you will see later on, 3 hours and 10 minutes." If passengers "did not want to stop at Los Angeles, they are privileged to take this immediate train No. 17 via the Coast Line, or we permit them to take the 'Owl' leaving Los Angeles a little later." We arrange their sleeping-car accommodations for them at request, before they get into Los Angeles. "They may take the Owl, for the San Joaquin Valley, which leaves Los Angeles at 6 o'clock p. m., and arrives at San Francisco at 8 o'clock the following morning;—thereby reducing its own time again 3 hours and 40 minutes. Or they can continue in their sleepers (that is, with the same accommodations) at Los Angeles until 7:30 p. m. and go via the Coast Line and arrive at San Francisco at 11:40 in the morning."

Choice of trains at Los Angeles.

The "Owl."

They can stay right in their sleepers, or get out and run around Los Angeles. The sleeper goes through. "The Owl is the train in California like the 18-hour trains between Chicago and New York. * * * Between Los Angeles and San Francisco. It has been operated for a good many years, and although that territory was strictly local they put on a train which they called the Owl, and offered the best service that money could obtain, and they did it for the convenience of the people locally between San Francsico and Los Angeles, 482 miles; and the time varied, according to the re-building of the road, or wash-outs, or anything like that, from 14 to 15 hours. But it nearly always is run from Los Angeles to San Francisco, say (4641) at 5 o'clock at night out of Los Angeles, arriving at San Francisco at 8 o'clock in the morning." These transcontinental passengers are privileged "to use the Coast Line, and that train goes through Santa Barbara, San Luis Obispo, Paso Robles, the location of the famous hot springs, and Del Monte—the show places, San Jose, and up through the Santa Clara Valley into San Francisco." The service continued concurrently, and continuously on the Owl, never taken off.

Service on New Orleans train between Los Angeles and San Francisco.

In respect to the New Orleans train at Los Angeles, most "of the passengers leave it at Los Angeles or points east of there, or else

they are destined to local points on the locals. From Los Angeles we deem it largely a local train, providing service Los Angeles to San Francisco; the few passengers who stick to this train for the through trip to San Francisco are these who do not want to be annoyed by changing their baggage and who are enjoying or did enjoy the lay-over at Los Angeles for the afternoon, breaking the journey, running around. It is a privilege that has been advertised very strongly and it has proven a great attraction to that route." No. 10 eastbound leaves San Francisco at 4 in the afternoon by the Coast Line, arriving at Los Angeles at 8:30 in the morning. (4642) There is additional service by the Owl, which passengers can take leaving San Francisco at 6 o'clock, going through the San Joaquin Valley and reaching Los Angeles at 8 o'clock in the morning. No. 10 leaves San Francisco at 4 o'clock, arriving at Los Angeles at 8:30 with a "lay-over," leaving Los Angeles at 12 o'clock M.

No. 10—eastbound.

"In either case they have the morning at Los Angeles, and then they can leave at 12 o'clock noon, taking the sleeping accommodations that they have engaged at San Francisco, and continue the journey on to the east of Los Angeles. This lay-over at Los Angeles has also proved an attraction to the route. * * * It gets in there at 8:30 a. m. No. 10's hour of departure from Los Angeles is largely governed by the branch line connections in Southern California. * * * It connects at Maricopa with the Maricopa & Phoenix, delivering that line the standard sleeper from Los Angeles. It has a connection from Bowie over the Gila Valley, Globe & Northern; at El Paso with the Texas & Pacific, and the National Lines of Mexico as well as the El Paso & Southwestern; at San Antonio it delivers the San Francisco weekly tourist sleeper to the M. K. & T. for St. Louis; at Houston it makes connections for Galveston and with the Houston & Texas Central for Dallas. Its New Orleans arriving time, 6:45 p. m., is governed by its eastern connections, which leave there at 7:10 p. m. to 8 p. m."

Lay-over at Los Angeles.

Connections.

Trains 9 and 10 "have been improved from year to year until they now embody about all the features of the so-called high-class limited trains like the North Coast train of the Northern Pacific, like the Los Angeles Limited over the Union Pacific and San Pedro, like the Golden State Limited over the Rock Island and Southern Pacific. They carry every sort and character of car that those trains carry—diners, sleepers, observation cars, all classes of first-class equipment, (4643) and in addition they carry tourist sleeping cars which afford passengers of limited means comfortable quarters, in perfectly good sleepers, as I said before, between California and New Orleans, at $5.75 per berth as against $11.50 in so-called standard cars, the passenger in both cases receiving the same carrying service from the railroad." These cars are electric lighted now, and supplied with fans.

Nos. 9 and 10, high-class trains.

The observation cars are an "entirely different class of car from the other described car—what we call a composite cafe car, the inclusion of which makes us run an additional car on the train. We

New style observation car.

used to carry baggage in that car, but as we considered it extremely hazardous to put first-class travel up next to the engine, we provided a car with accommodations for smoking and drinking, and so forth, at the rear of the train, with big lounging space in the observation end, rotunda, etc. * * * The only through cars between the so-called trunk line territory and California are operated via New Orleans in connection with these trains. The trunk line territory is not invaded by any other through cars, by any other means. These cars run from Washington, D. C., to San Francisco. * * * It is now 4 cars a week, and they run over the Southern Railway, Atlanta & West Point, Louisville & Nashville, and the Sunset Route. They began with a weekly car, and got up to four cars a week. On other days in the week this same train carries a car from Chicago to San Francisco via the Illinois Central to New Orleans and Sunset Route west; another day it carries a car from Cincinnati to San Francisco by the Baltimore & Ohio Southwestern to Louisville, Illinois Central to New Orleans, and Sunset Route west; another day a car from St. Louis to San Francisco via the Missouri, Kansas & Texas to San Antonio, and Sunset Route west. * * * In addition to the service between New Orleans and California already described, the so-called Sunset route west of El Paso had through service since 1902 between Chicago and Los Angeles and San Francisco by the Rock Island Route."

Through cars.

Golden State Limited.

(4644) The Rock Island train was inaugurated November 2, 1902, and was a "very high class electric lighted train, called the Golden State Limited, with dining car, tourist sleeper, buffet smoker, standard sleeper, Chicago to San Francisco, standard sleeper Chicago to Los Angeles, and observation sleeper Chicago to Santa Barbara. * * * It was operated daily from November 2, 1902, to March 28, 1903; semi-weekly from March 28, 1903, to April 30, 1903; it was resumed December 20, 1903, with the same equipment, and ran daily until April 15, 1904; resumed December 25, 1904, and has run daily until the present time. * * * The only change up to January 2, 1910, being, in the summer, a chair car was added, and the train during the summer months was called the California Express. * * * And then during the summer months we called it the California Express. Now, on January 2, 1910, the tourist sleeper was taken off this train, and after that only first class equipment was left. I want to make a point of that—I want to emphasize it. On January 2, 1910, the tourist sleeper was taken off of this train and only first class equipment was left."

Called "California Express" in summer.

"Californian" started Jan. 2, 1910.

On January 2, 1910, another train was inaugurated over the Sunset Route, from El Paso to Los Angeles, called the "Californian," which train "carries a chair car, diner, one 14-section tourist sleeping car, Chicago to Los Angeles; one 16-section tourist sleeping car St. Louis to Los Angeles; one 12-section drawing-room sleeper Chicago to Los Angeles; one 10-section observation car St. Louis to Los Angeles. The cars from St. Louis run over the Missouri Pacific Road to Kansas City, thence via Rock Island." (4645)

Its consist and schedules.

Westbound this train leaves Kansas City at 10 p. m. On the Southern Pacific it is No. 1 and 2 between El Paso and Los Angeles; eastbound it would be No. 2 Californian. "Eastbound this train leaves Los Angeles at 3 o'clock in the afternoon, and is known as No 2. and styled 'Californian.' Eastbound, Monday at 3 o'clock p. m.; arrive El Paso Tuesday, 5 p. m. (Pacific time); leave El Paso 6:30 p. m. (Mountain time); arrive at Kansas City Thursday, 2:45 a. m.; arrive St. Louis Thursday night, 7:05; arrive Chicago Thursday evening, 5 o'clock. The apparent dead time is at Kansas City from 2:45 a. m. Thursday morning; they lie there until the morning connections eastbound for St. Louis on the Missouri Pacific, and take the 8 or 9 o'clock train out of Kansas City in the morning, with that through car, and get into St. Louis at 7:05 p. m. * * *

"The train continues on to Chicago. Westbound this train leaves Kansas City Monday, at 10 p. m., arriving at El Paso Wednesday, at 5:50 a. m. (Mountain time); leave El Paso Wednesday at 5:20 a. m. (Pacific time); arriving at Los Angeles Thursday, 7:35 a. m. The Chicago connection of this train westbound is a slower train and a very heavy pick-up train on the Rock Island Road, coming through from Chicago, through Kansas, performing all the local service, having through cars to be delivered to the Southern Pacific at El Paso, getting in there in the evening, and those through cars lie over there until the arrival of the main train from Kansas City, and all going on together the next morning, leaving El Paso, as I have stated, on Wednesday, at 5:20 a. m. In other words, while this is a quick limited train from Kansas City, it is a pick-up train from Chicago through to El Paso via the Rock Island and the El Paso & Southwestern, consolidating the two trains at El Paso, and forming one train from El Paso west. * * * The Southern Pacific lately put on another train, or, rather arranged this service. Another train leaving El Paso say Monday at 9:55 p. m., arriving at Los Angeles Wednesday morning at 6:30; leaving Los Angeles say Monday night at 8 o'clock, and arriving at (4646) El Paso at 3 o'clock Wednesday morning—apparently an unseasonable hour for arrival at El Paso. * * *

Train between El Paso and Los Angeles.

"In the reverse direction, it leaves Los Angeles Monday night at 8 o'clock, and arrives at El Paso Wednesday morning at 3 o'clock. The reason for that inconvenient hour is that it serves thoroughly the needs of the line between El Paso and Los Angeles. If they ran it into El Paso say at 7:30 or 8 the next morning, it would be so very slow that the freight trains might be inconvenienced by it, and there is no particular inconvenience to the passengers at that end of the route because it has chair cars and tourist sleepers, and they can stay in the car on arrival at El Paso until the next morning. I will give you the equipment of that train. It carries diner, chair car, tourist sleeper, westbound El Paso to Los Angeles, and standard sleeper from the Texas & Pacific, operating between St. Louis and Los Angeles. That standard sleeper, as they term it, is a broiler

cafe car, which they use on their line in lieu of a diner." The number of that last train was 7 and 8.

Time of Golden State Limited shortened.

On January 17, the time of the Golden State Limited was shortened, leaving time from Chicago being the same, but arrival at Los Angeles being at 3:30 in the afternoon as against 7 p. m. "The quadrennial weighing of mails begins about this season, and the Golden State Limited has carried the mail out of Kansas City in the morning to Los Angeles ever since the discontinuance of the daily service of the Santa Fe train before the previous quadrennial weighing, and that mail which the Golden State Limited carries is the big heavy mail out of New York that the Pennsylvania Railroad runs a special train for from New York to St. Louis and the Missouri Pacific from St. Louis to Kansas (4647) City, arriving at Kansas City just previous to the departure of our Golden State Limited, which leaves Chicago say at 8 o'clock at night."

U. S. mail.

Mail delivery at Los Angeles.

The Missouri Pacific and the Pennsylvania from New York to St. Louis take it to Kansas City. "That mail previously got into Los Angeles at 7 p. m.—too late for delivery, and the post-office department wanted to expedite the mail to Los Angeles, say, a day. That could be done if we would get our Golden State Limited into Los Angeles in the afternoon in time for an afternoon delivery, they working up the mail before it got into Los Angeles. And we did that. Now, the Santa Fe California Limited carries another large mail, and they expedited their California Limited in order to get into Los Angeles at 3 o'clock in the afternoon. By both of those lines the mail now arrives at Los Angeles at 3 o'clock by the Santa Fe and at 3:30 by the Southern Pacific, working it up before it gets into Los Angeles, and delivery is immediately made, and mail may go back east at 8 o'clock that night. That whole scheme started by an expedition of the mails between the Twin Cities and Seattle by the Great Northern Road. The mail formerly handled between Chicago and the Twin Cities and the mail formerly handled betwen Chicago and Seattle—say, for the sake of illustration, that it would leave Chicago 10 o'clock Monday night; it would arrive at Seattle Thursday evening at 7 o'clock.

Mail between Twin Cities and Seattle.

"The Great Northern put on a train from the Twin Cities that took that mail into Seattle Thursday morning at 5:45 a. m. Leaving Chicago at the same moment the same evening, the mail to Portland, which went by Omaha and the Union Pacific Road and the Oregon Short Line and the O. R. & N., arrived in Portland formerly in the evening; it was then expedited into Portland, arriving there at 8 o'clock in the morning, and that Portland mail was carried out of Omaha westbound, in Union Pacific big trans-continental mail train No. 9, which left Omaha say at 9 o'clock in the morning or thereabouts, and arrived in San Francisco at 1:08 p. m. So that it left this situation: The mail leaving Chicago at 8 o'clock at night and, for illustration, arriving at Seattle at 5:45 in the morning, arrived at Portland at 8 o'clock in the morning, arrived at San Francisco at

Arrival of mail at Seattle, Portland and San Francisco.

1:08 in the afternoon, arrived in Los Angeles at 6 p. m. over the Santa Fe, and 7 p. m. over the Golden State Limited.

"Then came on this stress of weather, trains being late, and so forth, 8 o'clock arrival at Portland, Oregon; if the train were 2 or 3 hours late may be the man would be at his club or lunch before he got his mail. The time was fairly made to San Francisco, 1:08 in the afternoon, and well made to Los Angeles; but no delivery. So we arranged to split the big Overland Mail by the Union Pacific, put on additional service and run the Portland mail separate to Green River and on to Portland, and arrive at Portland at 7 o'clock in the morning. That enabled us to make better time to San Francisco because we had a lighter train Omaha to Green River. And then we arranged to run from Omaha to San Francisco and arrive at San Francisco at 10 o'clock in the morning, the mail being worked up in that way."

Split mail train.

Better time to San Francisco.

(4648) It left Omaha about "9 or 9:15. The leaving time was not changed, because its leaving time is dependent upon the receipt of the mail from the east. Now that left a peculiar situation. Leaving Chicago the same hour, the same night, and so forth, the man got his mail at 5:45 at Seattle, 7 o'clock at Portland, and 10 o'clock at San Francisco. That was not fair to Los Angeles. The man at Los Angeles did not care particularly if he got his mail at 10 or 11, but he wanted it some time during the day when he could get his answer back. So we arranged with the Department to get into Los Angeles at 3:30 in the afternoon. And that was the reason for the expedition of the Golden State Limited. There are some other details which it might be necessary to explain. * * * With this mail arriving at San Francisco at 10 o'clock in the morning, if the mail were expedited from the east into Los Angeles, arriving at Los Angeles at 3:30 in the afternoon, a great portion of the mail which the Union Pacific and Southern Pacific had been handling by Omaha might go via Los Angeles, arriving at Los Angeles at 3:30 in the afternoon, immediately take the 'Owl' and go to San Francisco at 8 o'clock in the morning, beating the mail via Omaha at 10 o'clock, and we would lose the haul. * * * The Southern Pacific, and then Union Pacific for a greater distance. The carrying lines, in other words, would lose the haul, and just before the quadrennial weighing that is pretty serious, because the mail is weighed only for 105 days, and then you carry it for four years on that basis."

Golden State Limited expedited, account mail delivery.

This new schedule, Omaha to San Francisco, 9 a. m. out of Omaha, and 10 a. m. into San Francisco, would be the expedition of the present train from 1:08 noon to 10 o'clock in the morning. "With this mail into Los Angeles at 3:30 in the afternoon and catching the 'Owl,' the carrying lines would lose the haul of that mail via Omaha, and so forth, and they could not afford to get to San Francisco at 10 o'clock in the morning. That question was gone over very carefully with the post office department, and they do not make agreements with railroads very readily to lengthen things out. But it was shown to the post office department that all

Light and heavy mail.

the light letter (4649) mail, circulars, special delivery, and stuff like that, would have this additional expedition to San Francisco, 8 o'clock in the morning by the 'Owl,' and that the big, heavy magazines, newspapers and all that, for which they receive a cent a pound for transportation, would still get into San Francisco at 10 o'clock in the morning, and if that mail were sent around by Los Angeles the Government would have to pay on that mail the rate of 1 cent—I mean would have to carry that mail for which they got 1 cent per pound 412 miles, say, farther for the sake of expediting it 2 hours, and they leave that mail on its old route. So that all I have been saying means that mail was expedited, or will be, to San Francisco and to Portland and all that, now the weighing is on, and it will be carried during that weighing, and however it is carried during that 105 days it will continue for four years."

Expedited mail to San Francisco.

Mail routes.

The mail that I speak of does not go via Chicago on the Golden State Limited. The New York mail goes by the Pennsylvania to St. Louis, and by the Missouri Pacific from St. Louis to Kansas City, where it is delivered to the Golden State. The U. P.-S. P. mail by Ogden is taken by the New York Central and Lake Shore to Chicago, there collected by the Burlington and Northwestern, arriving in Omaha in the morning, and leaving on the big overland mail at 9 o'clock. (4650) In giving publicity to the Sunset Route service prior to 1901, about $25,000 was spent to advertise westbound service in 1894; that increased in 1900 to about $31,000; 1901 to $41,000; 1902, $40,000; 1903, $83,000; 1905, $70,000; 1906, $95,000; 1907, on account of the panicky conditions, etc., it dropped down to $54,000; 1908 was a little better, $67,000, and 1909, as near as I can get it, about $92,000. In 1901-2 about $5,000 was spent to advertise the eastbound service, and since 1905 about $10,000 annually. For the fiscal year 1909-10, for all advertising, publicity, and development work for the territory served by the Sunset Route, there was about $225,000 appropriated.

Expenditures to advertise Sunset route

Tourist car service.

In respect to the tourist car service on the Washington Sunset Route, "the route is, say, by the Pennsylvania road, New York to Washington; Southern Railway, Washington to Atlanta; Atlanta & West Point, Atlanta to Montgomery; Louisville & Nashville, Montgomery to New Orleans; Sunset route, New Orleans to San Francisco." The line was established in 1896, when we had one tourist car per week; we added a second in November, 1898, a third in 1899, and a fourth car per week in 1909. (4651) These cars run from Washington and are served by the lines from Boston and New York, taking the service at Washington, where the car starts. The westbound traffic originates principally in "New York and New York territory and up in New England. A great deal of the traffic is composed of people who have permanent homes in California, and the balance is the sightseer and tourist, the cars being personally conducted, and the rate being lower (as I have previously explained) than for the standard car." As to the fourth tourist sleeping car, put on in 1909, we expect to enlarge that equipment. "We have

done it gradually, but as far as we could. Otherwise it is a seasonal car. We want a car every day, and now we are contemplating putting on a fifth car, and when we can fill that we will put on a sixth car, ultimately hoping to have a car a day."

Volume of passenger traffic.

I have figures for 1897 and again for 1909, for the westbound and eastbound passenger traffic on that route—westbound 1897, 981 passengers; 1909, 1,835; eastbound for 1897, 915 passengers; 1909, 1,508. I have passenger figures for 1906, 1907, 1908, by the New Orleans Steamship Line. "I will give it to you segregated. Local to New Orleans, 2,728; to Texas, 527; to California, 1,403—total, 4,658. Year 1907, New Orleans local, 3,835; Texas, 1,018; California, 1,988—total 6,841. Year 1908, New Orleans local, 4,646; Texas, 2,055; California, 1,637—total 8,338." (4652)

Comparison as to passengers via Ogden and El Paso.

I have a memorandum from 1901 to 1910, showing the comparison of the number of passengers via Ogden to and from the U. P. and the number of passengers via El Paso to and from the G. H. & S. A., which would be the Sunset Central Line, leading towards New Orleans. "I will give you the heading of the statement and you will understand it. The statement I am going to read to you now is headed this way: 'Comparison of number of passengers via Ogden to and from the Union Pacific'—not the Denver & Rio Grande, just the Union Pacific—'with those by El Paso to and from the G. H. & S. A.'—and no other connection. * * * 1901, 5 months only, by Ogden-Union Pacific, 24,600; under the column headed 'G. H. & S. A.' 14,863. * * *

"The data I have compiled both for time-card and earnings and statistics were not made for fun; it was done with the desire to afford to Mr. Severance just as much information as to you or to any one else. It was done to make a good, clean expose of the situation, and when I started in to get 1901 or any other year—and I hadn't much time to get it—they said to me, 'I can only give it to you for 2 or 3 months.' I said 'give it to me for what you can.' Now that is all I could get for 1901. * * * (4653) 1902, 62,737 under Union Pacific; 37,261 under the heading G. H. & S. A. 1903, Union Pacific 82,128; G. H. & S. A. 44,950. * * * Unfortunately I could not obtain them for 1904, 1905, or 1906. But if they can be obtained later, and you want them, I will have them put in this record, but I am afraid they cannot be obtained. * * * 1907, under Union Pacific, 114,520; G. H. & S. A., 73,732. 1908, Union Pacific, 90,297; G. H. & S. A., 60,786. MR. SEVERANCE. That falling off was on account of the panic? * * * (4654) WITNESS. Yes. 1909, Union Pacific 89,409; G. H. & S. A. 70,420. 1910, for the month of January only, Union Pacific 6,196, G. H. & S. A., 7,817."

U. S. reclamation work.

The Sunset Route passes through New Mexico and Arizona as well as California. Reclamation work has been done by the United States Government, also work has been done on the Roosevelt Dam and Laguna Dam above Yuma, and that development work has a relation to passenger traffic. "Laborers going to work on it, men

going to view the construction, men going to sell all sorts of commodities to the contractors, and so forth; the building up of that important territory; horses, men, mules, sustenance, etc., and the general development in that territory." With reference to the $225,000 appropriated for advertising and development work for the fiscal year 1909-1910, he would use the term "development work," if it "was the development even of a negative up to the development of a territory. It is anything that pertains to the upbuilding of the community, the increase in the passenger business, and so forth and so on. But in this particular case it was the development of a territory, in other words making productive a territory that before was absolutely barren."

Imperial Valley.

Imperial Valley is situated in Southern California between Los Angeles and the State Line. This "development work" is carried on "by every means that the mind of the most alert men in the United States can conceive of. * * * Let us start with the man who saw something in the Imperial Valley. There has been thousands upon thousands of men cross there on horseback and wagon and train, and so forth, and one day (4655) a fellow went who saw more than any other man. He believed it could be developed. How? By waste water. From where? The river. How will you get it over on these lands? Took borings, found that silt from the river had gone into an old sea, and he got down as far as 700 feet and found that it was the same kind of silt that was on top, and then they found the silt had filled in that old sea. Then he started a company for the purpose of bringing the water over on to this very rich soil, and finally had to take it around through Mexico to get it up there; and when they got the water on that land, they found it was more productive than any other land, and from the observation of that man who saw more than any other man (and probably a chemist and so forth) came the Imperial Valley, which contributes so enormously to-day to the revenue of the Southern Pacific, to the revenue of the State of California, and to the home-making of hundreds of people."

Publicity to public improvements.

We give publicity to these things, like the Roosevelt Dam, for instance, or the Imperial Valley development. We make enormous efforts to focus public attention upon them "by means of photographs, newspaper publication descriptive of the great work, and lecturers hired, who have moving pictures of the teamwork, the piling up of the rock; what the Government says will be done there in the future, or what will be possible when it is accomplished; the fact that from 200 to 300 thousand acres of barren land will be made productive; the influx of the men who want to get there and get hold of a piece of it before the price gets too high. All this gives to the G. H. & S. A. road some revenue." Nearly a quarter of a million dollars has been, for this past season, set aside for just such work. "That is one kind of development work. Now, there is another development work. The waters rose and covered that territory down there, and the whole United States Government said

it could not be stopped. The Southern Pacific had a man who said it could be stopped, and he stopped it. If he had not stopped it, there would not have been anything left there, and development would have ceased in that territory. First we started it and built it up, then the floods came, and then we started it again."

Reduction in train mileage at time of panic.

(4656) I have a memorandum as to the time cards effective November 10, 1907, and the reduction in train mileage spoken of in the record at the time of and shortly after the panic. "I had a copy of a telegram from assistant general manager Scott. Naturally, when the slump came, everybody was asked to reduce. Assistant General Manager Scott of the Southern Pacific wired Mr. Kruttschnitt, March 28, 1908, that with the time cards effective November 10, 1907, the Southern Pacific saved 63,321 miles of train mileage. * * * December 8, 1907, 9,276 miles; December 29, 1907, 88 miles; January 5, 1908, 7,818 miles; February 9, 1908, 20,058 miles; March 22, 1908, 13,396 miles." The reduction of train mileage "practically covers passenger train service, but it does not include a great deal of train mileage saved on freight trains, etc., running them alternate days instead of daily. And the figures themselves mean that time cards had to be so readjusted to take care of the necessities of the travel, with regard to the due economy made necessary by the serious time; and everywhere where mileage could be saved, it was saved. Where two sections of trains had been run before, they were doubled up, and one section was run, even though it took a considerably longer time to get a train over the road. Where branch lines had service galore (because service encourages travel) it was cut down to the necessities of the people, and maybe one train made to do what two trains did before. In fact, aside from some of the trains which you have seen by statistics, or will later on (that have not been changed for a long time) all mileage put on before with the hope of building up future traffic was taken down and the mileage was cut down to the serviceable traffic—simply the mileage left that met the necessities of the people. * * *

"This refers to the passenger business. Now, those figures show that west of El Paso a large reduction in mileage was made, and therefore the cancellation of Nos. 7 and 8 between El Paso and San Antonio was not to be wondered at." The train mileage reduction at the time of the panic of 1907 bears upon the northern trains. "Train No. 6, San Francisco to Ogden, formerly ran in two sections. It was reduced to one section, and we did the best we could with it. Train No. 16, San Francisco to Portland, two sections, was reduced to one section, and trains 11 and 12, San Francisco to Portland, 772 miles in each direction, were discontinued entirely." There was resumption of service in respect to that train. "The other service becoming crowded, and there being a great and growing need for an increased and better service there, and (4657) the people calling attention to the fact that there was a train like the Owl running from San Francisco to Los Angeles (a commercial train)

New 27 hour train between San Francisco and Portland.

and asking 'What is the matter with the business between San Francisco and Portland, and San Francisco and Tacoma and Seattle and this northern territory—why can't we have a train?'—out of that grew the 27-hour train between San Francisco and Portland, which has lately been extended to Seattle," which was a new train put on in June, 1909. From New Orleans the old second-class train, so-called, did not continue to run. There are three trains a day. . I don't count 11 and 12 as ever being resumed; it was a train of different character, the third train put on. The new train was put on as a commercial proposition. "For a distance there was a gap. I can not quite recollect the card in there, but my recollection is that there were two daily trains, and that a third train ran up part of the way and then there was a gap as there is between San Antonio and El Paso, and another train from Ashland into Portland. But I would have to consult the card to be certain about that." The Golden Gate Special on the U. P., often referred to as the first of all the high-grade trains, rather a misnomer, was inaugurated December 5, 1888, leaving Council Bluffs every Wednesday, and San Francisco every Saturday, until May 14, 1889. It consisted of a (4658) "combination of baggage car, library-buffet car, dining car, two double drawing room Pullman palace sleepers, and one 8-section observation sleeping car. It was steam-heated, and electric-lighted (so far as you could say they could do it in those days—not very satisfactorily)—and carried dining car all the way through. * * *

Sunset service.

Golden Gate Special—U. P.

Schedule of Golden Gate Special.

"It left Council Bluffs at 7:45 in the morning; arrived in San Francisco at 9:45 p. m.; left San Francisco at 3 p. m.; arrived at Council Bluffs 9 o'clock in the morning. It was a 64-hour train east and westbound. Then, westbound, when the change came in March, the train left Council Bluffs at 9:45 in the morning and arrived at San Francisco at 7:45 in the evening. * * * 60 hours instead of 64. Made a little better time. Eastbound the time was lengthened out. It left San Francisco at 8 p. m. and arrived at Council Bluffs at 3:45 p. m. The time was 65 hours and 45 minutes, while westbound it was 60 hours (60:45) * * * Showing that as far back as December 5, 1888, the Union Pacific road did pretty nearly as well as it does to-day, or ever has done, with the Overland Limited; and showing clearly what could be done in those days over a railroad where there was no density of traffic and things could move along. * * * About 25 years ago the Lake Shore had a 25-hour train called 'The Limited,' a little later reduced to 24 hours and called 'New York-Chicago Limited,' and a little later 'Lake Shore Limited;' 24-hour schedule. * * * May 18, 1890 (20 years ago) the 'North Shore Limited' was put on by the Michigan Central, making the distance in 24 hours. It made its last trip sometime in 1898. Then came the 'Southwestern Limited,' inaugurated October 6, 1899, and operated on a schedule of 30 hours and three-quarters from St. Louis to New York. Then I have 'Michigan Central 'Wolverine',' inaugurated May 14, 1905. * * * (4659)

Limited trains on other roads.

That was a 24-hour train, too. During the World's Fair a 20-hour train, called 'Exposition Flyer,' was run over the Lake Shore road, as a starter, but the '20th Century' inaugurated on a 20-hour schedule June 15, 1902—I think I will take that up later. Anyway, during the World's Fair, in 1893, a 20-hour train was started, called the 'Exposition Flyer,' over the Lake Shore and New York Central. * * * The '20th Century' was inaugurated on a 20-hour schedule on June 15, 1902, and on an 18-hour schedule June 18, 1905. * * * The 'Florida Special' was the first attempt at electric lighting, and it was in 1887, by the Florida Coast Line, started by the Pennsylvania Company. These preliminary electric lightings were axle devices and were comparatively failures. In 1897 the first successful lighting that we have been able to learn about from time to time was used on the Lake Shore Limited." The St. Paul put on the Pioneer Limited in 1897 or 1898, which was electric-lighted, the electric light being made in a car carried next to the engine—an enormously expensive train.

(4660) In 1897 the Pennsylvania ran the Florida Special down the Atlantic Coast Line, in connection with the Savannah, Florida & Western. The present time by the Lake Shore Limited is 23½ hours. The Southwestern Limited is the New York Central, Lake Shore and Big Four train between New York and St. Louis, put on at 30 hours, now running in about 24 hours. The Montezuma Special was put on in 1889. "I had to do with it because we hauled it from Chicago to Louisville over the Monon—with which I was connected, and then south over the Louisville & Nashville, delivering it to New Orleans to the line operating from there. The train operated between New Orleans and the city of Mexico, commencing from New Orleans February 7, 1889. Then, in order to attempt to do better with it, they carried it farther north, and, on March 4, 1889, they ran it from Cincinnati to the city of Mexico. It was discontinued April 30, 1889." It ran between New Orleans and the City of Mexico from November 10, 1889, to February 28, 1890, when it was discontinued finally. It was a high-grade train and a light train, consisting of a straight sleeping car, a drawing-room car, a combined baggage and library car, and a dining car. The route was S. P., Mexican International, and Mexican Central.

Santa Fe's California Limited.

(4661) The Santa Fe's California Limited, semi-weekly, inaugurated in November, 1895, left Chicago at 6 p. m. on a schedule of 68 hours to Los Angeles. It was discontinued in the spring of 1896. They had similar service in 1896 and 1897. It was a seasonal train. For 1897-8 it was inaugurated October 20, leaving Chicago at 6 p. m. Wednesdays and Saturdays, arriving at Los Angeles 5:50 p. m. Saturdays and Tuesdays; and leaving Los Angeles 8 a. m. Mondays and Tuesdays, arriving Chicago 9:43 a. m. Fridays and Mondays—about 68 hours. On January 17 it was made tri-weekly, the equipment then being three sleepers, a diner and buffet smoker. It was discontinued in the spring of 1898. For the season 1898-9 it left Chicago 8 p. m. Monday, Wednesday and

Saturday, arriving Los Angeles 1:50 p. m Thursday, Saturday and Tuesday. Left Los Angeles 1:20 p. m. Monday, Wednesday and Saturday, arriving Chicago 9:52 a. m. Thursday, Saturday, Tuesday—66½ hours; three 10-section, double drawing-room sleepers, one observation sleeper, one diner, one buffet smoker. It was discontinued late in the spring. "For the season 1899-1900: left Chicago 8 p. m. Tuesday, Wednesday, Thursday, Saturday; arrived Los Angeles 1:50 p. m. Friday, Saturday, Sunday, Tuesday. Left Los Angeles 6 p. m. Saturday, Sunday, Tuesday, Thursday; arrived Chicago 2:15 p. m. Tuesday, Wednesday, Friday, Sunday. The time was 67 hours and 50 minutes westbound and 66 hours and 15 minutes eastbound. * * * Three 10-section double drawing-room sleepers, one observation sleeper, one diner, one buffet smoker. In the spring the service was reduced to semi-weekly and was maintained, I think, for the first time then throughout the summer."

They began daily service some time in 1901, again reduced to semi-weekly service, resumed again daily November 3, 1901. (4662) "Left Chicago at 8 o'clock p. m., arrived Los Angeles 2:40 p. m.; left Los Angeles 6:10 p. m., arrived Chicago 2:15 p. m. * * * Two 10-section double drawing-room sleepers, one 10-section observation sleeper, one 6-drawing-room compartment sleeper, one diner, one buffet smoker. The equipment was changed from time to time, the six-drawing-room sleeper being replaced by a two-drawing-room 7-compartment car. It developed, on nearly all lines, that for the long travel the drawing-room compartment car was not always just the thing. * * * It developed on most of the lines, that the equipment in those days provided for the long journeys, by the Pullman, was not the most desirable car; and I believe nearly all have determined now that probably the best combination sleeper is a car that has, say, one drawing-room, two compartments, and a certain number of sections. That is just an aside. But on these limited trains we have to have a certain number of drawing-rooms and compartments, and so forth. Those are for long pourneys."

The time westbound would be 68 hours and 40 minutes. When it left Chicago at 8 o'clock and got there at 1:50, it was 67 hours 50 minutes running time. Eastbound, leaving Los Angeles at 6:10, getting to Chicago at 2:15, it would be 66 hours 5 minutes. The train was electric lighted for the first time in the season of 1898-9. During this time of the seasonal train, the Santa Fe had a daily train. The Canadian Pacific's limited train was the Imperial Limited, put on in June, 1899, running weekly. (4663) Equipment, first-class sleepers, tourist sleepers, diner, coach and baggage. For 1903, tri-weekly train added same equipment. In 1904 two daily trains, and in 1909 they began to use observation cars. This last season the Imperial Limited was discontinued during the winter months, because of the character of the country they go through, but it will be resumed about June 1st. The N. P.'s North Coast Limited "was inaugurated April 28, 1900; discontinued November 1, 1900. May 5, 1901, until May 22, 1909, equipment:

Imperial Limited.

North Coast Limited.

coaches, tourist and standard sleepers and observation car. May 23, 1909, until middle of August, 1909, standard sleepers, section and drawing-rooms, observation car. Middle of August, 1909, two compartments, one drawing-room, 10-sectioned sleeping car added —The car I referred to a little while ago as a compartment car; that was run until November 30th. December 1 until February 27 the consist of the train was: coaches, tourist and standard sleeping cars, and observation car. February 27, 1910, standard sleepers, observation car, drawing-room, compartment section sleepers."

They have an observation car and dining car, and buffet smoker up ahead. "As I understand their train, that is the only thing I object to much about it. They have a buffet smoker, unless they have changed it. They used to have, when they ran it next to the engine. I don't know how they are running it now; I think they run their car at the rear of the train now. * * * Commencing May 23, 1909, the Northern Pacific commenced service from Chicago with their number 3, and eastbound part of the North Coast Limited equipment went through to Chicago. Since October 31, 1909, the service is through from Chicago to the coast, in both directions, by their train No. 3 and 4." (4664) The Great Northern "Oriental Limited" was established "November 19, 1905. All classes of equipment, including compartment and observation car. * * * Commencing May 23, 1909, the service extended to and from Chicago. This train, as I understand, has tourist sleeper, first-class sleepers, etc. I haven't it just exactly." The "North Coast Limited" from Chicago to Portland " is 72 hours to Portland, and must therefore be, say, 72 hours to the coast from Chicago."

Oriental Limited.

In respect to the Washington Sunset Route since 1900, in the way of increasing traffic, "efforts have been made in every possible way; watching to secure new and good equipment; getting the best conductors to personally take care of people traveling; extensive machinery to make the people in the east acquainted with the fact that they could send a child or a woman alone to California in the direct care of a certain responsible party all the way through. * * * I was getting back to my old transportation days. I mean that we have a big office in Washington, say, and that office has its agents, and all through the season they endeavor to get to the people there the information that at any time of the year they have persons unattended, young girls, women and children—or if a man and wife want to go and be relieved of a good portion of their responsibilities of travel, that this Washington agency and the force of employees will do the work for them."

Washington Sunset Route.

Service of Washington office.

The Raymond & Whitcomb excursion business "is a big separate agency of another kind and character entirely. But for many years the Raymond & Whitcomb agency operated in a very unfriendly way to the Sunset Line. Their business went out by the Santa Fe and went back by the Rock Island. When I use the term 'unfriendly' I mean the Sunset line did not get any of their business. * * * The other line was the preferred line. * * * And later an endeavor was

Raymond and Whitcomb.

used and Raymond & Whitcomb began to send some of their business by Sunset line; and finding that it was a good line and that the climatic conditions were in favor of that Southern route, even during the summer months, at times they sent business to that line and helped increase its importance and earning power." (4665) Some of the Raymond & Whitcomb business has gone over the Sunset since 1900. The S. P. has advertised in support of the Washington Sunset Route "by means of circulars, newspaper advertising, lecturers, printed matter—pictorial and otherwise. And the success which I think we have shown in the line was brought about by such effort, in spite of the fact that the general public had the impression, for a long time, that the line traversed by the Sunset Route was a line of great resistance as regards personal comfort, etc.; hence, it was desperately hard to work business that way."

Oiled Sunset line.

Desirable line in summer.

Since 1900 we have taken steps to bring the physical and climatic conditions or advantages of the Sunset Route to the attention of the public "by means of advertising, etc., and constantly improving the line It was a dusty line at one time; then they oiled it, and it became pleasanter. It was built well in the first place, and a good deal of money has been spent on it since. Then we called the attention of people to the fact that the United States Government itself said that it was a very desirable line to use in the summer; in fact, the weather bureau statistics show that it is. Tables will prove that to you." On the Southern route via El Paso into California, expense has been incurred in reference to a water system. "If you will notice the time cards, the time varies from time to time from the figures I give you. It all shows work being done on the various lines over which these trains run. Over the El Paso & Southwestern in connection with the Rock Island service via El Paso, great trouble was had on account of snow in the winter and lack of water for their engines. Those people started to provide for their engines the best possible water supply that could be afforded. At an expense of over a million dollars they brought water from the mountains to the engines—water that is good for the boilers and for steam-making, etc. That increased the efficiency of that route very much indeed, so far as that link is concerned. * * * Between the termination of the Rock Island road (Santa Rosa, say) and El Paso, over the E. P. & S. W."

Water supply.

Rock Island line.

(4666) The Rock Island runs from Chicago to Santa Rosa, and the trains go through solid from Santa Rosa over the line of the Dodge-Phelps people, El Paso & Southwestern, sometimes called El Paso & Northeastern, right up to El Paso. In respect to water supply, and these expenditures,—"they just finished that, I think, this last season—in the last two years. Now, the Southern Pacific west of El Paso naturally hailed all these improvements with delight, because that line west of El Paso to California was greatly in need of more service than it could get, in connection with the line from New Orleans up to El Paso. The line up to San Antonio had been operated with double daily service profitably, but between San

Antonio and El Paso they could not, and just as soon as the Rock Island got to El Paso the Southern Pacific seized on that connection and their tender of a through train with great avidity, and they have encouraged the Rock Island ever since to do the pick-up work for them and bring the business to them at El Paso. While you might say it short hauls the Sunset route, they do get 816 miles of haul from El Paso to Los Angeles, and on to San Francisco quite a little. * * *

Encouraged Rock Island.

"The Union Pacific and Southern Pacific operating from Omaha to San Francisco, say—take one train, take the Overland Limited train for instance, which leaves Chicago about 7 o'clock at night and gets into San Francisco I think at 7:28. Now for a long time the Northwestern and the Milwaukee & St. Paul Road afforded the Union Pacific Road a 12 hour schedule to Omaha, and (4667) that is a very fast run up to Omaha. That allowed more time west of the river, and that time was pro-rated or arranged between the Union Pacific and the Southern Pacific at various times in different ways according to the work being done on the Union Pacific or on the Southern Pacific, or whether the excess of stress was on the Union Pacific or the Southern Pacific. Take last season, for instance. We had to give the lines east of the river more time, and we did give them more time. * * * And we allowed them more time on this last change of card. * * * Well, they were all shot to pieces, they could not make any time—they could not make anything like their time, and we gave them about an hour, I think, more on the last card between Chicago and Omaha, and that time had to be taken up by the Southern Pacific and the Union Pacific."

Time pro-rated west of river on Ogden route.

We did this without lengthening out the through time, which remained the same, 7 p. m. from Chicago, and 7:28 into San Francisco. The U. P. and the S. P. maintained the integrity of the total schedule; "and at a time when the Union Pacific is operated with snow and ice and rain they put the running on the Southern Pacific, which is a dry line from Ogden to Sparks, making it run faster." As to the roads between Chicago and Omaha being shot to pieces, "I will use the language of the president of the almost perfect road of America—the Chicago & Northwestern, who for 37 years had operated the road, and who told me personally that in all his experience he had never seen anything like that 6 weeks. The Chicago & Northwestern Road, having double-tracked its line from Chicago to Omaha, had a great deal of soft track. In October the rains came, and in November and December the snows and ice came, and the soft track froze up, and any operating man knows what that means. It is humped and it is in awful condition. Now, the Northwestern Road was not in condition to go into the winter as it was ordinarily, and the subsequent operation of it proved that. And that (4668) same thing affected the Milwaukee & St. Paul from the river to Chicago."

Bad track between Chicago and Omaha.

Bearing on the passenger schedule of the Overland Limited the conditions of construction arising out of the physical properties

Effect of rebuilding was upon schedule of Overland Limited.

of the U. P. since 1901 were stupendous. "The double-track, the rebuilding, the rehabilitation of the line; the delays incident to the movement of material, the consequent congestion; better described by the fact that you can not double-track a line for much less than you can build a new line. If a line costs you $30,000 a mile to build, it will cost you $30,000 a mile, or approximately so, to put another track right alongside of it. That means delay. The Union Pacific built the Lane cut-off, and that meant delay. They double-tracked 13 or 14 miles west of the Watson Ranch, and that caused delay. They built pieces of double track that later on will be hooked up to make the double track through 50 or 60 miles long, and all of that caused delay. Then, the Union Pacific, to my mind, is subject to more serious congestion than any road in the West.

Lines converging at Omaha.

"You might liken it to the small part of a funnel, only it has a funnel at both ends. Here are 6 or 7 lines, one of them a double-track line, from Chicago, with foreign business for the Union Pacific at Omaha, and the Union Pacific, having a single track line, expected to carry that traffic to Granger, where there is another funnel, and there comes the Oregon Short Line, and the Southern Pacific is at Ogden and the San Pedro at Ogden, throwing it in that way again. So that the Union Pacific, with a single track, is the recipient of business from six or seven tracks at Omaha and four tracks at Ogden, and it is a problem to move it all over that single track line. * * * Not satisfied with giving it all it can do at Omaha, they put it in at Cheyenne, at a most embarrasing point. And also at Julesburg from Denver. If it all came in at the terminals they could better arrange for it, but it does not. It is a one-track road trying to do a twelve-track business." They have been double-tracking as "fast as they can get men and weather conditions. The Union Pacific was laying double-track at a very rapid rate when on came the early winter. They have the iron and everything of that kind there, and if they have luck they will probably be double-tracked to Julesburg by late in the fall. That will help out."

One track road trying to do a twelve track business.

Betterments on Santa Fe.

The Santa Fe has done work west of Kansas City, eliminating grades and curves and all that. (4669) It has been going on for four or five years, with the same trouble in the West that we encountered. It has affected their passenger time, the schedule changing from time to time. They went from 66½ hours to 72 hours to Los Angeles. I doubt whether they would have cut their time down the other day so as to arrive at Los Angeles at 3 p. m. if they had not about finished their work; in fact, they are using some of their reconstructed work. They are double-tracking between Chicago and Kansas City, to be finished early next year.

Effect upon their passenger time.

Train service between Ogden and San Francisco in 1900.

The train service in 1900 between Ogden and San Francisco was three passenger trains. I have a statement covering 1900—September, 1909—and February, 1910. (4670) I have taken the month of January, 1900, September, 1909, and February, 1910, not for any significance in those months, but as illustrative. If you will take the year 1900 you will probably find that the Overland

Limited time differed—it might leave San Francisco in January at 8:30 in the morning, getting to Chicago at 9:30; and in May it might leave San Francisco at 11 in the morning, getting to Chicago at some other time, because the controlling feature would be its connections. We aim to leave San Francisco nowadays as late as we can for the convenience of people who have to go out into the country. Since the San Francisco fire more people live out of town. My showing of train service via Ogden Route is shown by Defendants' Exhibit *232*, at pages 4671-4678 of the record.

(TESTIMONY RESUMED, NEW YORK CITY, FRIDAY, MARCH 4, 1910.)

(4678) As to the running time of the Ogden Route for 1900—Chicago to San Francisco, as compared with later years: "This is for January, 1900, train 1 (the Overland Limited), westbound from Chicago; time, 73 hours and 45 minutes. That same train, September, 1909, consumed 74 hours and 28 minutes; February 10, 74 hours and 28 minutes. The opposing train (No. 2) eastbound from San Francisco, January, 1900, 71 hours; September, 1909, 72 hours and 5 minutes; February, 1910, 72 hours and 20 minutes; with the explanation that the train in 1900 was not as heavy a train as in 1909 and 1910, so far as car equipment is concerned." The average time is about 72 or 73 hours on those trains. Now, No. 3, via Chicago & Northwestern westbound, 85 hours and 15 minutes through. "That is in 1900. That is a very heavy train; carries all classes of equipment, and, if necessary, carries empty equipment westbound for return of eastbound passengers; that is, to-day. That train, in September, 1909, 90 hours and 3 minutes by the Chicago & Northwestern, U. P., S. P., and 90 hours and 38 minutes by the Chicago, Milwaukee & St. Paul-S. P. In February, 1910, that train, 90 hours and 3 minutes with the Northwestern connection; 90 hours and 38 minutes with the Milwaukee & St. Paul. Again, the same (4679) explanation: that that train was a much heavier train in 1909-10 than it was in 1900, when it had only the Northwestern through equipment.

Running time of Ogden route.

Overland Limited, west and east bound.

No. 3, via Northwestern.

"No. 4 (the opposing train) eastbound, San Francisco to Chicago: in 1900 (delivery being made at Omaha to the Chicago & Northwestern) 81 hours and 15 minutes; September, 1909, 91 hours and 45 minutes; February, 1910, 81 hours and 50 minutes. No. 5, westbound, Chicago to San Francisco (being practically the train that the Southern Pacific operates for the Denver & Rio Grande and its connections—cars coming to the Southern Pacific at Ogden, for instance C. B. & Q. out of Chicago via D. & R. G. and then S. P.) in January, 1900, 96 hours and 20 minutes; in September, 1909, (taking that same line, C. B. & Q. and D. & R. G., although this train is served by other connections of the D. & R. G.) 95 hours and 28 minutes; February, 1910, 95 hours and 28 minutes. Explanation: that the route from San Francisco to Chicago via the D. & R. G.

No. 4.

No. 5.

No. 6.

and its connections is some 200 miles longer than the route via the Union Pacific direct. The opposing train (No. 6) D. & R. G., 95 hours and 40 minutes, in 1900; by the U. P. 83 hours and 15 minutes. * * * Well, that train, say in 1900, out of San Francisco ran to a connection of both the Union Pacific and the Rio Grande, and if the cars were delivered to the Union Pacific they made better time than down around the Rio Grande. * * *

"I will give you the U. P time first. That No. 6, eastbound, in January, 1900, 83 hours and 15 minutes from San Francisco to Chicago. Denver & Rio Grande, 95 hours and 40 minutes. That train, in September, 1909, served only the Denver & Rio Grande and its connections, and its time was 96 hours and 5 minutes. Again, in February, 1910, serving D. & R. G. and its connections, only, 96 hours and 5 minutes. In addition to that service eastbound from San Francisco (which apparently makes the Southern Pacific run what we call a one-legged service between Ogden and San Francisco) we have another passenger train (No. 10) leaving San Francisco somewhat later." It is a train that goes one way—one-legged trips. "It comes back as the big Overland Mail, which carries no passenger cars with the exception that when it gets over the mountain they may put on something any time they want to when it is going down grade there; so that train, in 1900, as you will notice, had to carry both the Union Pacific connection and the Denver & Rio Grande; but latterly they have been (4680) split up and the Union Pacific goes out on this No. 10—whatever there is for it. Eastbound that train makes 81 hours and 30 minutes, with the Union Pacific and Northwestern; and it makes 81 hours if it goes over the St. Paul road,—in September, 1909; and in February, 1910, eastbound, via the Northwestern, 81 hours and 30 minutes, and via the St. Paul, 81 hours."

No. 10 "One legged" service.

I was Passenger Traffic Manager of the S. P. from 1899, May, until 1904, during which time we were operating train service between San Francisco and Portland. As to the effect upon the conduct of the rail business between those points, so far as passenger traffic is concerned, of the steamship line between San Francisco and Portland, "the effect was so little that, finding abnormally low rates in effect at that time (the rail rate including sleeping car which was a most unusual thing) I finally had those rail rates raised considerably, and without any care as to what the steamship did, or without any let or hindrance on their part. * * * I mean I felt that the bulk of the business came from the tourist and the scenery-loving people of the country (we got most of our travel from them at that time), as we afforded the scenic attractions (and we would not let them run the boats up our railroad) that we ought to get more money for it. It was very expensive service. The rates that I found in there at the time (to be perfectly fair) had been advanced from the time of the war that has been referred to in the testimony of others, but they had not been advanced to a consistent figure. * * *

Effect of steamship line upon passenger business between San Francisco and Portland.

(4681) "The steamship line certainly carried business—a considerable business. The rail lines carried a good big business. And I paid no attention, as in charge of the affairs of the rail line, to the steamship line; that is, I did not pay sufficient attention to it to enable me to testify at this time just what they did do. I know they did a business, and I know they did a considerable business for steamship lines." The passenger business of the steamship line was very little as compared with the passenger business of the railroad line. The sailings were infrequent; the boats, to my mind, being taken by people who wanted the ocean trips. In point of volume, the steamship passenger traffic as compared with the rail passenger traffic was very inconsiderable. When I used the term "a considerable business" by the steamship, I was speaking absolutely, not relatively.

Business of steamship line.

"If I said I paid no attention to the steamship business, I did not intend to convey that impression; because I was not careless of even the business that chose that route up there on horseback. I watched all business that could possibly be contracted. To be perfectly candid with you—not 'with you' because I am always with you—but to get to you what was in my mind, I was very glad there was a steamship line there; because I think it in some way might have been attractive to people over there, and everything and anything that would attract people over there we were glad of. If there was any tourist that could be attracted by that steamship line I knew very well he would not go that way both ways, and I do not think he would ever go that way again—and we would get him back. If he was going down from Seattle to Los Angeles and back, and took a boat-line down, we would be sure to get the money going the other way." Taking the character and quality of our service, the accommodations to the public, and those various concrete aspects of the situation, we conducted our business on the rails with no relation whatever to the steamship company. As to the passenger, unless "he had taken the trip from Australia to New Zealand, which they say is the worst trip you can get on water next to the trip from Havana to New Orleans during the Equinox, he would be afraid ordinarily to go back."

He would never go via steamship line again.

Conducted rail business with no regard to steamship company.

(4682) In 1900 the D. & R. G. eastbound had one car daily from the S. P., a tourist car between San Francisco and Denver, but no car San Francisco to Chicago. I have the D. & R. G. data for the through sleeping cars east and west bound in 1910. "I have it here, January 3, 1910. Eastbound: standard sleeper; Oakland to Chicago, D. & R. G., C. R. I. & P., train No. 2, daily, one car. Oakland to Chicago, D. & R. G., C. B. & Q., No. 6, daily. Oakland to St. Louis, D. & R. G., Missouri Pacific, No. 6—— * * * I am giving you a standard sleeper on each one of these trains. The second was the car Oakland to Chicago by D. & R. G. and C. B. & Q., out of San Francisco on No. 6 daily. The next car, Oakland to St. Louis, D. & R. G., Missouri Pacific, daily; with the explanation that while ordinarily only one car would be operated

Through car service on D. & R. G.

on that train out of San Francisco via Ogden and the D. & R. G. daily, for the last two roads on No. 6, if they had more business they could have more cars, while on the first train, No. 2, operated in connection with the Rock Island, it being the Overland Limited, they would ordinarily be confined to one car.

Through car service from Los Angeles via Ogden.

"Continuing eastbound, under the head of 'tourist,' starting with Los Angeles, these cars coming up via Oakland or Sacramento, etc., and going east to Ogden and then over the D. & R. G. road and its connections: first car, Los Angeles to Chicago, D. & R. G., C. R. I. & P., on train No. 4, semi-weekly; Los Angeles to Chicago, D. & R. G., Colorado Midland, C. (4683) R. I. & P., No. 4, weekly; Los Angeles to Chicago, D. & R. G., Missouri Pacific, Chicago, Milwaukee & St. Paul, train 4, semi-weekly. * * * Next: Los Angeles to Chicago, D. & R. G., Burlington, train 6, weekly. Next: Los Angeles to Chicago, D. & R. G., Burlington, train 6, semi-weekly. * * * Over the same route. And again with the explanation that they demanded one every day on these trains because they carry more cars. Next: Oakland to Denver, D. & R. G., one car semi-weekly. Next: Oakland to Denver, D. & R. G., train 4, weekly. Next: Oakland to St. Louis, D. & R. G., Rock Island, train 4, weekly. Next: Los Angeles to St. Louis, D. & R. G., Burlington, train 6, weekly. Next: Los Angeles to St. Louis, D. & R. G., Missouri Pacific, train 6, weekly. This made a total delivery, east-bound, from the Southern Pacific to the D. & R. G. at Ogden, of three standard sleepers daily, and fourteen tourists each week.

"Under the heading 'Westbound': Standard sleepers: Chicago to Oakland, Rock Island, D. & R. G., No. 1 (Overland Limited) daily; Chicago to Oakland, C. B. & Q., D. & R. G., train 5, daily; St. Louis to Oakland, Missouri Pacific, D. & R. G., train 5, daily. Under the heading 'Tourist': Chicago to Los Angeles, C. R. I. & P., D. & R. G., train 5, semi-weekly; Chicago to Los Angeles, C. R. I. & P., Colorado Midland, D. & R. G., train 5, weekly; Chicago to Los Angeles, Chicago, Milwaukee & St. Paul, Missouri Pacific, D. & R. G., train 3, semi-weekly; Chicago to Los Angeles, Burlington, Colorado Midland, D. & R. G., train 5, weekly; Chicago to Los Angeles, Burlington, D. & R. G., train 5, semi-weekly; Denver to Oakland, D. & R. G., train 5, daily; St. Louis to Oakland, C. R. I. & P., D. & R. G., train 5, weekly; St. Louis to Los Angeles, Burlington, D. & R. G., train 5, weekly; St. Louis to Los Angeles, Missouri Pacific, D. & R. G., train 5, weekly. This made a total of three standards daily, and eighteen tourists each week." As suggested here by Mr. Horsburgh, the D. & R. G. service in 1900, instead of being a tourist San Francisco to Denver, was a standard car San Francisco to Denver. In addition to that there was a weekly tourist, San Francisco to Chicago.

Personally conducted tourist car business.

(4684) In the so-called "personally conducted" tourist car business to the Pacific Coast, the U. P. "do participate but not as extensively in that business as the D. & R. G. and its connections, simply because they cannot. It is not from lack of desire, but they

cannot accommodate the cars that are tendered them nor the cars that they would like to have. * * * It is on account of arbitrary limitations placed on the Union Pacific road. First, the Union Pacific, as I have explained before, is a single track line. It is trying to do a 4-track business. * * * It is trying to do an 8-line business; I am going west now. Coming east I will add 4 lines to it—and then we have a 12-track business. * * * Going westbound they are fed by all the lines into Omaha. I won't relate that. But they have got just as many passenger trains on the Union Pacific to-day as they can possibly run and take care of the freight they are running. This has operated to such an extent that the Union Pacific masses its passenger trains; and that is not a good thing, ordinarily, for a railroad trying to serve locally, as you have to in that country, with through trains. But if you do mass your trains, you get your road back. For instance, if you had six trains going west and you could put them all in 120 minutes—2 hours—and you could do that on the Union Pacific road if you had to, because, by the expenditure of money, etc., they have provided a block system that enables you to do that—you would have your road back in 2 hours.

U. P. has as many passenger trains as it can run.

Massing of trains.

"Now, that is impracticable. But they operate as well as they can, and make a decent spread in order to afford safe meets and passes. If you spread passenger trains 40 minutes apart on a single track railroad, you can't operate your railroad; you can't get trainmen to go out of sidings, that is, with cuts of freight, against opposing fast passenger trains. * * * I am speaking of ever since the Union Pacific began this new construction work, rebuilding, improvement by the electric signaling and the double tracking, and the Lane cut-off, and the fills over there. * * * I am only speaking since 1900, because I am referring now to the excess of passenger trains." (4685) The U. P. has been compelled to refuse cars from almost all of its connections, even going so far as to refuse to receive through cars, both standard and tourist sleepers, at Omaha, from the Rock Island, which line could serve the territory between Chicago and Omaha, and other territory there. They have refused the Illinois Central, standard and tourist both, not only to California but to Denver via Julesburg. The U. P. couldn't take it. And I could go on and explain if you wanted me to. The Chicago Great Western road have asked for the same thing. The U. P. can't do it. But when they finish these improvements they can, and I presume will do it.

U. P. has been compelled to refuse cars.

As to the reference made on the examination of one of the witnesses to the schedule time having been changed since the taking of the testimony began: "As I understood the point (I think I was in the room at the time) some reference was made to the schedule having been changed, and to a shortening of the Overland Limited time, since Mr. Kruttschnitt took the stand. For the purpose of being correct, I looked it up. No change was made since he took the stand, for any other reason than that explained yesterday, to Portland, which was brought about by mail conditions; and no

Recent changes in schedules.

change between Chicago and San Francisco for the whole haul; but the time was changed and the Southern Pacific road west of Ogden did shorten its schedule between Ogden and San Francisco. That was caused by a longer time being given to the lines between Omaha and Chicago—the Northwestern and Milwaukee roads. They had to have longer time between Chicago and Omaha, on account of the stress of weather, the condition of their tracks, etc. That number of hours taken out of Chicago to Omaha, the balance of the time was divided between the Union Pacific and the Southern Pacific, and that is never set. You can change it one day or the other. If the conditions are better for the Southern Pacific to make the time, they make it a little faster; or the Union Pacific: just as they do the Northwestern. In this case the through train time from Chicago to San Francisco is the same, but the Southern Pacific expedited west of Ogden."

Passenger train schedules.

(4686) In January, 1900, Overland No. 1 left Omaha 8:50 a. m. Tuesday, arriving at San Francisco 5:15 p. m. Thursday, 56 hours 25 minutes. In September, 1909, the time was 60 hours and 8 minutes. The time of No. 2, in January, 1900, Overland Limited Eastbound, San Francisco-Omaha, was 58 hours and 50 minutes, and in September, 1909, 61 hours and 19 minutes (4687); of No. 3, in 1900, Omaha to San Francisco, 65 hours 20 minutes, and in September, 1909, 70 hours 48 minutes; and the eastbound train, No. 4, in January, 1900, 69 hours 35 minutes, and in September, 1909, 70 hours 30 minutes. The S. P.-U. P. line, San Francisco to Omaha, was about 90 miles shorter in September, 1909, than in January, 1900; grades had been greatly reduced, and curvatures eliminated to a large extent.

Condition of track.

(4688) The train equipment and engines are heavier now than years ago. Part of the time, and part of the way, the track is in much better condition; part of the time not anything like as good condition, on account of construction, but that varies with the slow orders. It is not in as good condition for running. The track where completed is very much better than in 1900. When I went to the S. P. it was absorbing the sleeping car charge between San Francisco and Portland, a most peculiar arrangement. "The first class ticket included a sleeping car berth, and the second class ticket included a sleeping car berth, and according to my recollection the man bought one with the other—the one charge included both. In other words, the railroad settled with the sleeping car company."

Rate war between San Francisco and Portland.

(4689) During the war between the steamship line and the railroad the railroad threw in the sleeping-car tickets, and they did it afterwards too. As to whether the boat line threw in meals and berths and everything else in that war, I would not want any man to suspect me of ever having taken that boat trip. I have not taken it. I understand that at certain times of the year it is a very delightful trip, and at other times it is a very naughty one. We have some scenery on the Shasta Route, very thoroughly advertised, as an inducement for people to travel by that route. The boat line

has some scenery down the Columbia River, and they have some sea weather outside. While I was in charge of the S. P. passenger business, beginning in 1899, the rail line did most of this passenger business. As to the shortening of time of the through train to accommodate the Northwestern and the Milwaukee: "Taking the time from 1900 to 1910, you will see that while there is very little variation between the through time, that the time was varied considerably between Omaha and Ogden. I may state that one period, and not very long ago, the lines between Chicago and Omaha demanded 14 hours and 30 minutes on those through trains, and that made us expedite considerably. It may be that during the period you speak of the Northwestern and the Milwaukee were getting this so-called arbitrary between Chicago and Omaha. Latterly they ran those trains in 12 hours for us. At that (4690) time we had 2 hours and 30 minutes more in the card from Omaha to San Francisco, but the through time remained the same."

The rail line did most of the business.

Time between Omaha and Ogden.

I think in 1899 we were under agreement with the lines between Chicago and Omaha to allow them 14 hours and 30 minutes. When the Northwestern and the Milwaukee were shot to pieces and applied to us for longer time we extended their time an hour, taking that out of our time, shortening up the time between Omaha and San Francisco one hour from what it was last September; but now they have not as much time allowed them as they had previously, because then they had 14 hours and 30 minutes, instead of 13 hours, and then 12.

Time between Chicago and Omaha.

(4690) CHARLES S. FEE.

Fee.

I am Passenger Traffic Manager of the S. P., Pacific System, and have been since April 1, 1904. I was in the railroad service from "1874 to 1875 as a stenographer in the office of the general superintendent of the Michigan Central; from 1875 to 1877 as stenographer and clerk in the office of the superintendent and general superintendent of the Hannibal & St. Joseph Railroad, Hannibal, Missouri; from 1877 to about August 1, 1883, I was chief clerk in the office of the general manager of the Northern Pacific Railway at St. Paul, Minnesota; from August 1, 1883, to April 1, 1904, I was (4691) general passenger agent of that line; and from 1904 to the present time, with the Southern Pacific."

San Francisco Passenger Traffic Manager S. P.

The S. P. Shasta Route, rail line Portland and San Francisco, the greater bulk of the passenger traffic being local traffic between California points and Portland, Oregon, and points in Washington and British Columbia, and the through traffic being very largely made up of excursion business, was opened December 18, 1887. The prevailing rail rates between Portland and San Francisco are $25 stop-over, first-class, $20 limited first-class, $15 second-class. The ocean rates between the same points are, first cabin, $15, second cabin $10, steerage $5, applying also by the North Pacific Coast Steamship Company. These rates include, I think, meals. The steam schooner rate is nominally $12 first-class, where they

Rates between San Francisco and Portland.

have any first-class accommodations, and $8 second-class, but the rates vary constantly. I use the word "nominally" as I think they make almost any rate that is necessary to take a little of the business.

Water and rail service between San Francisco and Portland.

Steamers sail between San Francisco and Portland once a week The trip is from 50 to 60 hours. (4692) We have three daily through trains between San Francisco and Portland, each way, running time from 27 to 36 hours. During my administration of the passenger traffic, in conducting our own passenger traffic between Portland and San Francisco, I have not taken into consideration the steamship passenger business at all. "My own judgment was that the business which might seek the ocean route, the longer time, had reasons of its own, and that it would go that way almost regardless of the rate. In the summer season it is a somewhat pleasant journey for some people. Our business was large and satisfactory, and we never in any way recognized the ocean line."

Witness does not take steamer business into consideration.

Very little transcontinental business seeks the ocean line.

The steamship lines have occasionally handled some of the transcontinental round-trip business, but not of any moment. In respect to the through one-way first or second class business, very little transcontinental business seeks the ocean lines. While I was General Passenger Agent of the N. P., we made an effort on the opening of the N. P. in 1883 to secure via Portland a share of the California passenger business to and from Chicago, St. Louis and the East, via the steamer line, but as against the direct rail route through Omaha and Ogden, we didn't do any business—very little. After the completion of the Shasta rail route there was a meeting of the S. P. and N. P. rails at Portland, giving us a rail route to San Francisco via Portland, in contradistinction to the former mixed service. (4693) In that case we were somewhat more successful in securing a small portion of the transcontinental round-trip excursion traffic, and also some of the one-way business between the Twin Cities, the head of the Lakes, and California points, but the volume of that business compared with what was going through the Missouri River was very small, maybe one or two per cent., it was very small indeed. The $5 rate by the Shasta Route, about the middle of the 90's between Portland and San Francisco, did not affect the through business.

Volume of San Francisco business via N. P. all rail route, one or two per cent.

San Francisco route via Portland, not a factor.

In my experience as General Passenger Agent of the N. P., between 1883 and 1904, our line via Portland, or the line of the U. P. and O. S. L. via Huntington, Portland and the ocean, was not considered a factor of any importance in connection with the California passenger traffic. The amount of traffic we were able to secure by the longer line was so trifling that I do not think the direct lines between the Missouri River and California points ever took our line into consideration in any shape or form. Transcontinental fares from Chicago and the East to California via St. Paul, Portland, via the U. P., Huntington, Portland and the ocean, and the Shasta Route, are practically the same as via Omaha, Ogden and the S. P. direct, with the exception that the 30-day one-way rate,

Rates via Portland same as via direct lines.

stop-over ticket, and the round trip transcontinental excursion rate, were somewhat higher than the direct line rate; and this has been so since 1887. About 4 per cent., I think, of through passenger business between the East and California is carried via Huntington and Portland over the U. P. As to the D. & R. G., possibly one-third or one-half as much as the U. P. and O. S. L.

U. P. gets about 4 per cent of through business via Portland.

(4694) These percentages refer to the passenger business from the Missouri River and east to California, and are deductions from the exhibits in evidence. The Salt Lake Route was opened in 1905. The route via the Salt Lake line, Daggett and the Santa Fe, as a passenger route, was an undesirable one between Salt Lake and San Francisco, because of the greater distance and longer time—some 261 miles longer, and with the closest connections about 9 hours additional travel—no compensation for it, simply carrying the passenger around two sides of a triangle. (4695) The route from Salt Lake to San Francisco via Daggett, Los Angeles, and then S. P. to San Francisco, would be somewhat more attractive, but it is 433 miles longer than the short line, and would require about 15 hours additional time. The rate Salt Lake to Los Angeles, first-class 30-day rate, is $35, first-class limited rate is $30—Salt Lake Line. Salt Lake to San Francisco by Ogden, first-class 30-day rate is $36.10, first-class limited rate $31.10—Ogden and S. P. Salt Lake via Daggett and the Santa Fe, and via Los Angeles and the S. P., is in either case $39.25. While I have been Passenger Traffic Manager of the S. P. the rail line between San Francisco and Portland has not met the rates advertised by the steamer lines, and that is true also with reference to Seattle.

Route to San Francisco via San Pedro line, undesirable.

Rail line between San Francisco and Portland has not met rates of water line.

The chief passenger traffic of the N. P. while I was General Passenger Agent was between St. Paul and North Pacific Coast points, or intermediate points. After the G. N. got through, the two lines ran parallel, and we were competitive a good deal of the way on the through business. (4696) In securing competitive business, the efforts "of the passenger department are devoted to the building up of the business by advertising and setting forth the attractions of the line and the advantages of the country through which they run, not only appealing to the tourist but to the farmer." The same class of work was performed by the G. N., which had a large country to develop. In magazines, newspapers, circulars, folders, and every conceivable way almost, railroads put out descriptions of scenery, places, quality of equipment, things of that kind, to get travel over their lines—in every reasonable way. (4697) The difference in mileage between Salt Lake and the Missouri River by the U. P. and Short Line in comparison with the D. & R. G. and the Rock Island, is several hundred miles in favor of the U. P. But the D. & R. G. does a very large business, I understand a considerable business moves by that route. It is largely a scenic route, including the Royal Gorge. They have advertised its scenic features for many years, and the business has

Efforts to secure competitive business.

Advertising matter.

D. & R. G. does a large passenger business.

been built up practically on the scenic features of the line. The Daggett Route is practically a desert. It includes the Meadow Valley Wash, on the line of the Salt Lake.

Agreement of Aug. 2, 1905, betweer San Pedro and S. P.

Referring to the agreement of August 2, 1905, with amendment of January 27, 1906, between the Salt Lake and the S. P., in evidence on the examination of Mr. Munroe, and containing this clause: "Except upon basis of added locals, San Pedro Company will not join in rates to or from points north of Mojave and Santa Barbara, on any traffic to or from Utah common points, and east thereof, provided Southern Pacific give them the benefit of a switching rate of $2.50 per car on Los Angeles freight, within yard limits, to or from points in Colorado, Wyoming, Utah, Idaho, or Montana, west and inclusive of Colorado common points and Cheyenne"—we have no such agreement on passenger business with the Salt Lake, by which they preclude (4698) themselves from joining in any rates with the Santa Fe into San Francisco or points north of Mojave and Santa Barbara. They join with the Santa Fe in making rates from Salt Lake via Daggett to San Francisco, but the difference is between $31.10 Salt Lake to San Francisco via Ogden, and $39.25 by the San Pedro-Santa Fe combination. They have never met the Short Line rate, I don't know why, there is no obstacle. From Utah common points the Salt Lake has not applied the Short Line rate, but there is no agreement that they may not so apply it if they see fit. I have no statistics for the passenger movement by boat between Portland and San Francisco.

No such agreement on passenger business.

Lomax.

(4698) E. L. LOMAX.

Omaha Gen. Pass. Agent, U. P.

Resides in Omaha, Nebraska; general passenger agent of the U. P. Has been in the railroad business about forty years. Has been connected with the U. P. since September 1, 1887. (4699) Witness produces statement, Defendants' Exhibit 233, prepared by him showing the time of through passenger trains over the U. P. westbound as of February 1, 1901. He prepared a corresponding statement as of February 1, 1910, which is marked Defendants' Exhibit 234, and is set out on page 4700. (4700-2) Witness also prepared a statement, Defendants' Exhibit 235, showing equipment of U. P. through passenger trains as of February 1, 1901. (4702-4) Witness prepared a corresponding statement, Defendants' Exhibit 236, of the equipment of through U. P. passenger trains as of February 1, 1910. (4704-5) Witness prepared a statement, Defendants' Exhibit 237, showing a comparison of through time of U. P. through passenger trains as of February 1, 1901 and 1910.

Equipment of through U. P. trains.

Comparison of through time —1901 and 1910.

Service, 1901-1910.

(4705) The through passenger service on the U. P. as of February 1, 1910, compares very favorably with the through passenger service as of February 1, 1901. (4706) "In this way: that in February, 1910, we had more passenger trains, bigger and larger engines, more heavy rail, more steel bridges, more safety appliances; in fact our line was equipped with block signals and interlocking switches. As regards

Better service in 1910.

equipment, it consisted of steel cars, steel day coaches, chair cars, dining cars, baggage cars, observation cars, and the improvements in the equipment were of this character. Take the standard Pullman sleeper in use February 1, 1910, as compared with the character of sleeper in use in 1901, and we had added to it electric berth-lights; we had also added to it the very latest up-to-date sanitary conveniences in the toilet rooms. Take the dining cars. In 1910 they were equipped with the very best of modern up-to-date kitchens, cold-storage closets, and were larger cars. Our chair cars in 1910 were larger than those in 1901 and had a smoking compartment in them for the convenience of the traveling public. In those respects the service of itself was very much better. Compared with the number of passenger trains, I will take the electric lighted service for instance. In 1901 we had in the San Francisco service two electric lighted trains, one in each direction. February 1st, 1910, in addition to those two trains in the San Francisco service we had two electric lighted trains to Portland, one in each direction. We had two electric lighted trains for Los Angeles, although they were temporarily suspended on account of the wash-out on the San Pedro road. * * * I think the wash-out occurred about January 3rd or 4th; I am not sure as to the date, but it was in the early part of January. That train will go back into service as soon as the connections are again made. With regard to the Denver service, we had four electric lighted trains from Council Bluffs (starting at Chicago) to Denver, one train in each direction—two over the Northwestern and two over the Milwaukee & St. Paul. * * * Two in each direction; that is, one for the Northwestern in each direction and one for the Chicago, Milwaukee & St. Paul in each direction. From St. Louis, two electric lighted trains via Kansas City to Denver, one in each direction."

San Pedro washout.

Denver service.

(4707) The time on some of the through passenger trains was not as good on February 1, 1910, as on February 1, 1901; because "the conditions in 1910 were such that we had to wait for connections, which we did not do in 1901. For instance, with our through train to the coast, that is, both to Portland and to San Francisco now, we would wait for the Northwestern Railroad and for the Chicago, Milwaukee & St. Paul, and it was a regular thing that five out of every seven days one of those two roads was late—late from 15 minutes to two hours and frequently 7 to 8 hours. So that the starting of these trains from Council Bluffs depended upon the arrival of those connections which was not the case in 1901." They tried to make up as much of that time as possible on the U. P. And that was the reason why they lengthened out the schedule. Having these various delays from connections, it was very desirable to have such leeway or elasticity in the passenger schedules of these trains that they could make up the lost time—the time which (4708) was lost waiting for connections. And they had another source of delay; slow orders, on account of construction that was still going on along

Conditions as to time in 1910.

the line—double-track now mainly; there is some little reconstruction. The weather also bothers them sometimes. The traffic is much heavier in 1910 than it was in 1901; he would say the traffic is almost half as much again.

Effort to use Portland route, a failure.

"When I first went to Omaha, I think it was in 1887 or 1888, we tried to send passenger business by way of the Short Line and Huntington to Portland, and then from Portland to San Francisco by boat. But the route was so much longer, the boats were so irregular, I think about one sailing in four or five days, and the capacity of the boats so small, that the traveling public simply would not have it, and we stopped the effort, and made no further attempt. Three or four months was the period we tried to send business that way. Q. Can you state about what proportion of the passenger traffic going to San Francisco via Huntington and Portland, goes via the rail lines, and what proportion goes via the rail and water line? A. I should say that 99 per cent. of our passenger business over the Union Pacific goes to California by rail—almost all of it." The amount is small. The other 1 per cent. goes down via boat.

99 per cent of U. P. passenger business goes to California by rail.

Portland train No. 5.

Referring to exhibit 237, train No. 5 to Portland is not 10 hours longer now than it was in 1901. No. 17, which is the new 1910 train, for Portland, is making the run in 58 hours and 15 minutes. (4709) The No. 5 shown in that statement under 1910 is known as 3-5; it does not correspond with No. 5 as shown in 1901. The corresponding train No. 5 in 1901 is now No. 17. The numbers appeared the same on the statement, but the character of the train does not correspond. No train in 1901 corresponded to train No. 5 in 1910. The line to Portland is 18 or 20 miles shorter now than in 1901. It is in very much better physical condition now. The time is not shortened up, though the line has been, on account of waiting for connections, slow orders, and construction that is still going on.

Shortening of line.

The time was shortened January 16th last, about an hour and a half or two hours. Extending the time of the Overland 43 minutes longer than it was in 1901, is a small matter on a long run. The run is not as long by 90 miles as it was in 1901. (4710) Witness would not regard shortening the line 90 miles a matter of any importance in the length of time it would take to make the run—

Difficulties of operation.

not in view of the difficulties under which they are still laboring with that train; delay on account of connections, lost time on that account, and for the construction work that is still going on. Everybody knows that when you have construction of any kind, whether laying double track or tearing the track up, or building a cut-off, that your

Construction work, slow orders.

slow orders will prevent you making any fast time over the track. The shortening up made on January 16th was simply an experiment.

NEW YORK CITY, MONDAY, MARCH 7, 1910.

(4711) OTTO H. KAHN (2)

Kahn,

I reside in Morristown, New Jersey, and am and have been since 1897 a member of the banking firm of Kuhn, Loeb & Co. On the reorganization of the U. P. in 1898 I was a member of its board of directors and executive committee, and so continued until late in 1905, or early in 1906. (4712) I am familiar with the resolution in evidence here, of February 20, 1901, by the U. P. board of directors for the issue of $100,000,000 of convertible bonds. The first $40,000,000 of them were offered to the stockholders, and I should say, roughly, 75 per cent. taken by the public; the second $60,000,000, which were not offered to the stockholders for subscription, were bought by my firm direct.

Partner in firm of Kuhn, Loeb & Co.

U. P. convertible bonds.

After the death of Mr. C. P. Huntington in August, 1900, we were apprehensive of a movement by interests other than the U. P. in the direction of acquiring S. P. stock. "As I say, the members of the executive committee realized some time before Mr. Huntington's death the vital importance to the Union Pacific of a continuation of its old established relations with the Southern Pacific. The entering of a hostile influence into the Southern Pacific, to the extent of controlling it, might have brought with it (in all likelihood would have brought with it) very dangerous consequences to the Union Pacific inasmuch as it related to the Union Pacific's free access to San Francisco, for which it had used the Central Pacific for many years. So much so that Mr. Harriman, in the last year or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington (4713) so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific system. That was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific. When Mr. Huntington died the situation became even more threatening, in that we were advised that there were other influences attempting to purchase the Southern Pacific. Therefore, when opportunity presented itself to acquire control, or something approximating control, of the Southern Pacific, the Union Pacific people gladly availed themselves of the opportunity. And they did that because of the vital importance of the connecting feature of the Southern Pacific as represented by the Central Pacific, which gave to the Union Pacific access to the coast at San Francisco, and also the valuable element of the feeding lines in California, north and south."

Apprehension of a move by adverse interests to secure S. P.

Importance of continuing established relations with S. P.

Efforts of Mr. Harriman to arrange definite relations with Mr. Huntington.

Offered to buy Central Pacific alone.

Other influences attempted to buy S. P.

Vital importance of S. P. as a connecting line.

In the purchase of the S. P. stock under these circum-

Business of S. P. in the northwest was not considered in connection with purchase.

stances, the circumstance that the S. P. was engaged in some local business—using local in respect to the Pacific Coast, and more particularly the Northwest—some local business to Oregon points, or neighboring points in Washington, Idaho and Montana—was so negligible an influence that I did not even know of it. "That thing was never mentioned, as far as my knowledge as a member of the executive committe went, of the relations between the Southern Pacific and the Union Pacific. It was almost exclusively the element—in fact I can say exclusively the element—of the connection to the coast which entered our minds; and the existence of the Sunset-Route not only was no inducement to us to buy the Southern Pacific, but it was by us considered an obstacle and a deterring feature, because we did not care for the Sunset Route, we would have been glad to be relieved from it. If a way could have been found to secure the Central Pacific alone, we all would have preferred it at that time. As a local feature the competition was considered so negligible that, so far as my knowledge goes, it was not even considered at any of the executive committee meetings at which the subject was brought up."

Existence of Sunset route, no inducement.

Would have preferred Central Pacific, alone.

Oriental business was not considered.

(4714) As to the Asiatic or Oriental business through the port of Portland, the S. P. engaging in Oriental business through the port of San Francisco, that subject matter was never considered, discussed or mentioned. And as to the Morgan line of steamships from New York to New Orleans, in connection with the rail lines, carrying some business to Utah and Colorado points, the U. P. also engaging in some business to Colorado and Utah points—the existence of any business by either company in respect to Colorado and Utah points was of no influence whatever in our minds in this stock transaction; it was never considered, discussed or even mentioned. The circumstance that $40,000,000 of the $100,000,000 convertible bond issue were specifically appropriated to the purchase of S. P. stock, while the application of the remaining $60,000,000 was left undesignated, I am familiar with: "I had a large part in discussing and determining upon that issue, and I know exactly what was in our minds in concluding that that issue should be made $100,000,000; although at that time only $40,000,000 were needed to pay for Southern Pacific stock, and I am quite willing to disclose it, if I may. * * * That was early in February.

Existence of seaboard business to Colorado and Utah, of no influence.

"The authorized issue was made $100,000,000 notwithstanding the fact that for immediate purposes only $40,000,000 were required. There were a number of reasons for making that issue $100,000,000. The first reason, the general reason, which was particularly a reason inherent in Mr. Harriman's manner of conducting the financial affairs of the company, was that he invariably asked for authority for a larger issue of securities than were immediately needed. That was so in the case of the Oregon Short Line Participating Bonds, where $82,000,000 were authorized and

Reasons for making issue of convertible bonds, $100,000,000.

Invariable practice to ask for more than immediately needed.

only $31,000,000 were immediately needed; in the case of the Oregon Short Line Refunding 4's, where $100,000,000 were authorized and only $4,000,000 were immediately needed. In the case of the Southern Pacific preferred stock there were $100,000,000 authorized and only $40,000,000 immediately needed. And it has been similarly done very frequently in the case of other railroads, such as the Norfolk & Western, the Pennsylvania, (4715) the Atchison, all of whom, as a measure of convenience and as a measure of precaution, when going to their stockholders and asking for authority for a new issue, ask for a great deal more than was immediately needed. That was the first reason. The second was that at that time there were reports—very definite reports—that the Hill interests were going to acquire the Burlington.

Reports that Hill interests were to acquire the Burlington.

"Mr. Harriman was quite clear in his mind, and so were we all quite clear in our minds—that if the Burlington were acquired by interests antagonistic to the Union Pacific, one of two things would happen: the Union Pacific would go and ask for representation for a share in that purchase, so as to leave the existing situation as between the Burlington and the Union Pacific undisturbed. If it got it, well and good. If it did not get it, it would fight—it would protect itself as best it could against what it considered a danger. And for that purpose money was required to face a situation which, in Mr. Harriman's mind, was quite clear would lead to one of two things: either he would be given a share in the Burlington, in which case he would need money to pay for his share: or he would not be given a share in the Burlington, in which case he would fight, and for fighting he would not know in exactly what way and where the fight would take place, how he would use his money, but he knew he would use his money for attack and defense, and when a man prepares for such a fight, or makes such a fight, what he needs is brains and courage and money. Mr. Harriman did not need to provide himself with brains and courage, for he always had those at his disposal, but he did need to provide himself with money in anticipation of a possible use for it, in a situation created not by his own volition, but created by others, and which he felt threatened and endangered the interest of the Union Pacific and must be guarded against. * * *

Attitude of U. P. in the event Burlington was purchased.

"In 1900, for the first time Mr. Harriman conferred with us as to the great importance of maintaining the existing relations—existing relations of competition and existing relations of feeding, I might say—between the Burlington and the Union Pacific, and as to the danger to the Union Pacific if a hostile interest acquired control of the Burlington. The Burlington in many ways was a very valuable business customer to the Union Pacific; in some ways it was a competitor but in many important ways it gave business to the Union Pacific. Mr. Harriman and we felt that that relationship should be continued. The Burlington, whilst an active competitor, was a fair competitor, with conservative management, and we had

Importance of maintaining existing relations with the Burlington.

The Burlington a fair competitor.

been able for many years to get along with it and live with it as active competitors but as fair competitors. Mr. Harriman and we received information that the people who were then in active control of the Burlington, (4716) mainly New England people, were thinking of retiring from the active management. Mr. Harriman, with our knowledge, entered into negotiations with them for the purchase of their holdings, which, if I remember rightly, amounted to something like 10 or 15 per cent. of the total of the Burlington stock. They asked too high a price to suit Mr. Harriman, and nothing came of his negotiations at the time. But the subject of preserving the Burlington independent, as it then was, was a matter of anxious thought and of anxious consideration as early as the beginning of 1900."

These early negotiations looking to the acquisition of an interest in the Burlington were made and continued throughout 1900, off and on, from the beginning of 1900. "The Burlington in some respects was competitive with the Union Pacific and in other respects it was a feeder to the Union Pacific. The relations, so far as they were competitive, were actively competitive but they were fairly competitive. * * * Mr. Harriman had great respect and liking for the management of the Burlington, for Mr. Perkins, of Boston, and the other gentlemen who for years had managed the Burlington. He understood them and he felt that they understood him. In the competition between them there was a spirit of 'Live and let live.'" In respect to the contemplated acquisition of 10 or 15 per cent. of the Burlington stock, there was no intent or purpose whatever in the contemplation of that transaction, or in its possible consummation, to extinguish the competitive factor of the Burlington, "and it could not have been done of course with the amount of holdings which were then contemplated; but it was in Mr. Harriman's mind and in our minds to have an interest sufficiently large to preserve the independence of the Burlington from outside control and to preserve the status quo which had existed for many years."

An interest sufficient to preserve the independence of the Burlington.

(4717) These negotiations having failed, I will now state what led up to the purchase of N. P. stock in 1901 by the U. P. "Towards the end of 1900 and early in 1901, reports came to us that Mr. Hill and his friends were negotiating for the control of the Burlington and were willing to pay the price which Mr. Harriman had declined to pay, and were willing to pay it for all of the stock. To express it very mildly, the relations then existing between Mr. Hill and Mr. Harriman were not exactly friendly. Mr. Harriman was a newcomer; he was a very aggressive man; he had, naturally, in the course of his rapid rise and in the course of his fight for the greater power and the greater recognition of the Union Pacific, to run up against the susceptibilities of many people, and the feelings between him and Mr. Harriman were, I should say, of mutual suspicion. Later on, I am happy to say, those men came to know each other better, and to appreciate and admire and

Events which led to purchase of N. P. stock.

Mutual suspicion.

respect each other, but at that time the feeling was anything but friendly. Mr. Harriman felt that, with Mr. Hill the controlling factor in the Burlington, the situation would be changed very much, to the detriment of the Union Pacific. He knew that there was competition between the Union Pacific and the Burlington; he might have preferred if there had not been any at all, but he knew that could not be, and he preferred to 'bear the ills he had rather than fly to others that he knew not of,' especially when the dispenser of those 'ills' was a man at that time a man so little friendly to him as Mr. Hill. And it was perfectly clear that that could not be permitted to happen—that control of the Burlington by Mr. Hill and his interests; that deflection of the Burlington's entire relations from the Union Pacific to the Northern Pacific, and the consequent shutting out of the Union Pacific from that immediate territory, could not be permitted without the most strenuous kind of an effort on the part of the Union Pacific to prevent it.

Control of the Burlington by Mr. Hill would be detrimental to the U. P.

"In March, 1901, if I remember the date rightly, the acquisition by the Northern Pacific and Great Northern of the Burlington was definitely announced. Prior to that time there had been repeated approaches made by the Union Pacific interests to obtain from the new owners of the Burlington some kind of recognition in the way of binding arrangements which would protect the Union Pacific against the dangers which it foresaw from hostile control of the Burlington. These approaches and efforts on the part of the Union Pacific finally came down to a request for a third or a half interest in that purchase, so that the Union Pacific interests could be in a position to watch and see that their interests were not sacrificed, and this request on the part of the Union Pacific was finally flatly and definitely refused, and they were told that no kind of a participation in the purchase could be given to them. Thereupon the Union Pacific interests served notice that they considered that a hostile act, and that they would have to take such measures as seemed to them best to protect their interests.

Purchase of Burlington announced.

Union Pacific refused an interest.

"I would like to mention in this connection, as bearing upon the connection which you have asked me as to the purpose of that $100,000,000 issue, that when that $100,000,000 was authorized, in the last days of January or the first days of February, (4718) we had not the remotest idea that we were going to buy the Northern Pacific. If we had had that idea it is natural that, having some experience in financial matters, we would have made that issue sufficiently large to take care of the amount which would be required to acquire control of the Northern Pacific. In other words, if it then had been in our minds to acquire a majority of Northern Pacific stock, as we afterwards did under compulsion, we should have made that issue $125,000,000 instead of $100,000,000 because acquisition of a majority of the Northern Pacific called not for $60,000,000 but for $85,000,000, and if it had been in our minds to do what we later on did do with the use of those convertible bonds, we would have

No intention of buying N. P. stock when $100,000,000 of bonds were authorized.

First time purchase of N. P. stock was mentioned.

made the issue sufficiently large to cover our needs and not sufficiently small to fall short by $25,000,000 of covering our needs. The first time that the acquisition of the Northern Pacific was ever mentioned between the Union Pacific interests was late in February, 1901, after the acquisition of the Burlington had come to our knowledge as a definite fact and after our efforts to obtain a peaceable solution of the situation thereby created had failed.

"I remember the date so distinctly because after the carrying through of the Southern Pacific negotiations, I went to Hot Springs, about the middle of February, 1901, and towards the end of February, 1901, I received a letter from my partner, Mr. Jacob Schiff, telling me that he had exhausted all efforts to bring about the recognition of the legitimate claims * * * of the Union Pacific to be considered in the purchase of the Burlington, or to be allotted a share in that purchase either for itself or for interests allied with it, and that therefore there was nothing to do but to bring about by indi- (4719) rection that which we had failed to bring about directly; that is, protection of the Union Pacific as far as the disruption of its relation to the Burlington was concerned, and that protection as far as he could see could only be brought about by our purchasing a control of the Northern Pacific which owned one half of the Burlington stock. Prior to that the idea of buying Northern Pacific had never been in our minds and had never been mentioned between us, and the purchasing of Northern Pacific was the direct consequence of the purchase by the Northern Pacific of the Burlington, and otherwise would never have taken place."

The purchase of the Northern Pacific stock "never came into our minds until the Great Northern and Northern Pacific absorbed the Burlington, and it was a consequence of their doing so. * * * Our attitude was a purely defensive one, with the purpose of maintaining the *status quo* in the relations of the Burlington and the Union Pacific." There was no relation or connection whatsoever between the S. P. stock purchase and our attitude and transactions in respect to the Burlington or the N. P. "At the time we bought the Southern Pacific, as I have already stated, the idea of acquiring Northern Pacific was in no way in the minds of any of us and we should not have acquired Northern Pacific unless and until the Hill interests acquired the Burlington, and thereby vitally (as it then seemed) interfered with the relations that had for many years existed between the Burlington and the Union Pacific."

Attitude of U. P. purely defensive.

The Rock Island and the Atchison roads were engaged in transcontinental business as railroad carriers in 1900 and prior thereto. At that time the position taken by the U. P. in respect to the acquisition of those properties or either of them bears, I suppose, upon the general subject of conspiracy, of which we are accused. "It is of course inherently wildly improbable that we should have attempted to monopolize all of the lines leading to the Pacific; and apart from its inherent improba- (4720) bility, I know

No basis for charge that they intended to monopolize lines leading to the Pacific.

of my own knowledge, and I swear most positively, that there is not the remotest basis of fact in that charge. And bearing upon your question, and as witnessing that, I wish to say that if we had had any such purpose, the way to do it would have been to follow the line of least resistance; that is, we should first have acquired those lines to the west, to the Pacific coast, which were easy of acquisition, and we should have finished up, if we had wanted to, by at last acquiring that line which was most difficult of acquisition, and where we knew we would be running up against the very strongest interests in the land—and that is the Northern Pacific.

Opportunity to acquire the Atchison.

"The Atchison reorganization was offered to us a few years prior to 1900, and if any such object had been in our mind we would have undertaken that reorganization, and with that reorganization would have gone (as there does always go) a very large measure of future control. But we preferred not to undertake such reorganization, and we did not undertake it. For years after the Atchison control could very easily have been bought in the market without bringing about a contest with any partizan interests, because the Atchison holdings were very largely divided and no very great compact holdings were held by any great banking interests. The other road which, if we had in mind the acquisition of all the lines to the west—the other road which naturally would have lent itself to easy acquisition was the Chicago, Rock Island & Pacific. That road was actually offered to Mr. Harriman in 1901, and Mr. Harriman came to us and told us that the gentlemen in control of the Rock Island * * * were thinking of laying down the burden and that the control of the property was in the market that it was a very excellent property and well worth the price at which it could be had.

Opportunity to acquire the Rock Island.

The U. P. and S. P. enough of a burden.

"We told him that he was in charge of the Union Pacific and the Southern Pacific, that that was as much as any man could properly attend to, and that even though he was a genius the burden of administering so enormous a system was, in our opinion, more than enough for any one man to bear, and that even if it were legally permissible to acquire the Chicago, Rock Island & Pacific, we thought there was a limit to the economic advantages of consolidation, of economy of operation, and that limit consisted in the size of the aggregation; that when the aggregation, at the head of which any one man is put, exceeds a certain volume, so as to exceed the human limitations of any one man to give personal and proper attention and direction, that then in our opinion there was no longer any advantage, from the economic point of view, in co-operation, in amalgamation, and that we strongly advised him not to think of that proposition for one minute. He agreed with us, the proposition was laid aside, turned down. If we had wanted to pur- (4721) chase all the lines leading to the west, or any substantial part of them, we would have bought, first, the Atchison and the Rock Island, which were easy to buy; and then possibly at the last, the very last, the

A limit to economic advantages of consolidation.

Northern Pacific, which we knew was very strongly held, by the strongest interests in the land."

Purchase of Atchison preferred.

I am using the term "Union Pacific" for "Union Pacific System." In the latter part of July, 1906, the U. P. acquired $10,000,000 of Atchison preferred stock; we sold it to the U. P. "The Union Pacific had on hand, as is generally known, a very large amount of Northern Pacific and Great Northern. The price of Northern Pacific and Great Northern had gone at that time to something like $320 for Great Northern and something like $250 or more for Northern Pacific, and the Union Pacific felt that at these extraordinary high prices, which made the interest on the investment barely 3 per cent. it would be very wise for them to sell, take their profit, and re-invest in other ways. * * * They could have reinvested—and the matter was fully discussed—in several ways. They could have kept the enormous amount of money which they realized from sales of Great Northern and Northern Pacific—they could have kept that enormous amount of money in the bank, where they would have had from 2 to 2½ per cent. on it, or they could have loaned it out on collateral loans. It would have meant that there would have been a fund at the disposal of the Union Pacific, in cash, of from $100,000,000 to $150,000,000, and we all felt that if that were done, that there would be, with the feeling which then existed against Mr. Harriman and those associated with him, a general outcry that the Union Pacific was trying to get control not only of all the railroads in the land, but of the money market, too, and that it was manipulating the money market with that enormous cash fund at its disposal. Therefore, the idea of leaving that money uninvested was discarded. The next alternative was for the Union Pacific to buy investment bonds with the proceeds of the sales from Great Northern and Northern Pacific.

"That would have given them an interest return of barely 4 per cent., and a somewhat inactive investment. Or the Union Pacific could have used part of that great cash fund to call in some of its bonds which could have been called, but the policy of calling in bonds was one which did not recommend itself to the (4722) judgment of Mr. Harriman or of his executive committee, for reasons of principle which would take too long to go into here. So there was the only alternative left for the investment of that enormous fund—of buying high-class stocks, bringing from 4½ to 5 per cent., and having at the same time the collateral advantage of giving to the Union Pacific some kind of a voice—simply as the voice of a considerable stockholder—in the councils of those principal lines from which the Union Pacific through its connection derived a great deal of valuable traffic, and that was the policy which was finally decided upon, and that was the policy which explained the purchase of the Atchison Preferred stock and of most of the other purchases in 1906." As to the $30,000,000 of Atchison stock, referred to in the testimony as having been purchased by Mr. Harri-

Proceeds of N. P. and G. N. stock invested in securities of other roads

man and certain associates, that was common stock. "That stockholding had been sold before the $10,000,000 of Atchison preferred were purchased by the Union Pacific. That stockholding, as far as the $30,000,000 of common stock goes, was a purely personal investment on the part of ourselves and some friends, and it was made because we considered Atchison stock at the prices at which we bought it a very attractive investment, and when we had enough profit on it we sold it out." The U. P. sold its $10,000,000 of Atchison preferred last year.

Sale of Atchison preferred.

The $75,000,000 par value of S. P. stock was bought from Kuhn, Loeb & Co.; "I think if you will look up the testimony which I had the pleasure of giving three years ago, * * * you will find that that stock was bought by Kuhn, Loeb & Company on their own responsibility and at their own risk, with the sole understanding that they took upon themselves the obligation of offering it to the Union Pacific, and that the Union Pacific would take it or not as it saw fit." (4723) The reasons for the purchase had been discussed by the U. P. executive committee at various times prior to the time that Kuhn, Loeb & Co. acquired the stock. I would hardly say that Kuhn, Loeb & Co. acquired it in view of the fact that they knew it was the purpose of the U. P. to take the stock over. "At that time there was, as I also explained three years ago, quite a grave legal question as to whether the Union Pacific could acquire Southern Pacific stock; the legal question being that under the laws of Utah it was somewhat doubtful whether either the Union Pacific or the Oregon Short Line could hold the stock of a holding company. The Southern Pacific at that time was a holding company and not a railroad company. Later on, that defect in the law was cured by legislation, but at the time we bought the Southern Pacific stock it was quite doubtful whether the Union Pacific would be able to take it off our hands, and we were quite prepared, if it could not, to hold it ourselves, and naturally with our interests in the Union Pacific we would have held it so as to cooperate with the Union Pacific."

S. P. stock purchased from Kuhn, Loeb & Co.

Question as to whether U. P. could acquire S. P. stock.

S. P. a holding Co.

The Utah law was amended giving additional authority to the U. P. or O. S. L., both Utah corporations. Kuhn, Loeb & Co. acquired most of this stock from the Huntington estate; a good deal of it was bought in the market. (4724) A year or so later Kuhn, Loeb & Co. bought $15,000,000 of this stock in the market, which was also bought by the U. P. or O. S. L. As to the purpose of this: "A contest was threatened with the view chiefly of forcing the Southern Pacific to pay dividends at a date earlier than the Union Pacific people in the board thought its physical condition justified it in devoting any part of its funds to dividends. The money, in the judgment of the Union Pacific directors on the Southern Pacific board, should have gone towards improving and maintaining and strengthening the property. The Union Pacific had spent many millions on making its line better, and the Southern

Most of the stock acquired from Huntington estate.

Reasons for purchase of additional S. P. stock.

Pacific, when the Union Pacific took hold of it, was in a physical condition very much inferior to that of the Union Pacific; and neither the Union Pacific itself, nor its shippers, nor its passengers could derive the full advantage of the improvements which the Union Pacific had made on its property until a corresponding improvement had taken place in the property of the Southern Pacific, which required an outlay of a very large amount of money. Therefore, the Union Pacific people thought that the payment of dividends on the Southern Pacific should be postponed until those necessary funds to put the property in first-class shape had been provided, mainly out of earnings.

"A great many stockholders disagreed with that point of view, and formed a combination to force the payment of dividends and to start a contest to take the dominating influence in Southern Pacific councils away from the Union Pacific into their own hands. It was in order to more firmly strengthen the Union Pacific's position in standing for its policy for the improvement of the Southern Pacific and for the better service which the Southern Pacific could (4725) give to shippers and the public, and in the opinion of the Union Pacific even vastly better returns, which would ultimately accrue to the stockholders from that far-sighted policy, that the Union Pacific people thought it was incumbent on them to increase their holdings in Southern Pacific to the point where their dominating interest could not be threatened by any combination of disgruntled stockholders. That was the reason why they bought $15,000,000 more." That was in 1902 or 1903. I had not been on the U. P. board since 1906 until I was re-elected to the board and to the executive committee about three months ago. The $90,000,000 of S. P. stock is owned by the O. S. L. at the present time. Neither the O. S. L. nor the U. P. since the acquisition of the $15,000,000 of stock has purchased any additional S. P. stock, to the best of my recollection; they acquired a proportionate amount of S. P. preferred. I do not think they acquired any S. P. stock since I last went on the board.

S. P. stock now owned by O. S. L.

(4726) My partner, Mortimer L. Schiff, is a member of the S. P. board and executive committee. Mr. Jacob H. Schiff, who went on the U. P. and S. P. board after Mr. Harriman's death, has resigned from both boards. (4727) About 75 per cent., as I recollect it, of the first $40,000,000 of convertible bonds were taken by the stockholders. The other $60,000,000 were sold to Kuhn, Loeb & Co. at the time the U. P. was making payment for the N. P. stock. We were apprehensive, in respect to the S. P. stock purchase, that other interests would purchase the stock of the S. P. and either give control to some one else—either that or with the death of Mr. Huntington other interests would naturally be coming into the S. P., who might be antagonistic to the U. P. It was reported to us that such other interests were negotiating for that stock. Those reports

Apprehensive that other interests would buy S. P. stock.

came to us throughout 1900, both before and after the death of Mr. Huntington; a number of varied interests was mentioned, Mr. Gould among others. I would not like to state, unless compelled, who these interests were.

(4728) These reports were naturally of a confidential character. Prior to Mr. Huntington's death Mr. Harriman had conducted negotiations during 1900 with Mr. Huntington—during 1899 and 1900—for the purchase of the Central Pacific lines. "It is pretty hard to remember such details ten years back, and I really could not say under oath whether I was or was not present. There were running conferences. Mr. Harriman would meet Mr. Huntington frequently. I might come across Mr. Huntington in his office, and might come at a time when this matter was under discussion, and I might not. I could not swear (it is a matter of ten years back) whether I had any particular conference or not. I know that such conferences were held. * * * (4729) What the Union Pacific wanted from Mr. Huntington and the Southern Pacific was some way (they did not care which) in which the existing relations between the Union Pacific and the Central Pacific could be put in definite, permanent and unalterable form, so that nothing could happen to the Southern Pacific (Mr. Huntington was an old man) which would affect the possibility of access under existing arrangements of the Union Pacific to San Francisco by the use of the Central Pacific. The Union Pacific was prepared to accept any reasonable arrangement which would have accomplished that purpose and which would suit Mr. Huntington, and among the ways thought of to accomplish it was the offer to purchase outright the Central Pacific and leave the rest of the system alone. * * *

Negotiations with Mr. Huntington.

Wanted existing relations made permanent.

"Mr. Harriman made that offer, and he made it more than once. * * * I was in daily contact with Mr. Harriman. I saw him after every important conference, and I saw him in conferences. Whether or not I was at the conference at which that particular proposition was made I could not swear." I stated that the Sunset Route of the S. P. was a deterrent feature. In my former testimony I said, in substance, that I was not very familiar with railroad questions, and had more to do with the financial part of the matter; Mr. Harriman was the railroad man. I knew in a general way of the Sunset Route, and that the S. P. had steamers from New York to the Gulf in connection with the rail line. (4730) I knew traffic went by that route, New York to California, but whether large or small, or how precariously they were doing business, I did not know. Before closing this proposition of the S. P. stock, we did not investigate very much into the property and business of the S. P. "We were pretty familiar through many years of observation, with the value of Southern Pacific stock and with the value of Southern Pacific property, as we are with the value of any other existing important railroad stock, and it does not need very

Sunset route a deterrent feature.

Did not investigate much into property and business of S. P.

Knew the value of stock.

much observation or very much investigation to enable us to judge whether at a given price a certain stock is worth buying or not. * * *

Knew intrinsic value of property.

Knew its earnings.

"We knew the property as far as its intrinsic value was concerned. As far as the details of its operation were concerned, that was a matter that did not concern us in the slightest in buying the stock. We knew its earnings and we knew that for many years it had accomplished such and such results, and we were confident that with the development of the country and with good management and with a good deal of money spent on it, to put it in first-class shape, it could be developed even into a more prosperous and more profitable proposition than it was at that time." We felt that the whole of the United States would develop, particularly the West. I knew, leaving out the boats, that the Ogden-San Francisco line was something like a tenth of the entire S. P. mileage. (4731) We knew that the S. P. owned a majority of the stock of the Pacific Mail Steamship Company. "We knew that had been bought, I believe, the year before we acquired the stock, and it was considerably criticized at the time. It was in no way an inducement to buying it, but rather the opposite. * * * I would not say a deterrent; it certainly was not an inducement. I know in a general way that at the time the Pacific Mail was bought the general opinion was that it had been paid for at too high a price, and that it was not a very advantageous investment to the Southern Pacific. It certainly did not in the slightest degree influence us in favor of buying the Southern Pacific, and it was not sufficiently important to deter us from buying it. * * * To be quite frank, we did not give it any consideration either way. It did not cut any figure either way."

Expected the country to develop.

Ownership of Pacific Mail stock no inducement.

Sunset route.

In respect to the Sunset Route: " 'Positive disadvantage' is putting it rather strong. In my first examination three years ago I called it a 'nuisance,' and I think that is still the best expression to designate the state of mind with which we then considered that Sunset Route. We knew it would require a great deal of money to be spent on it; we knew that it added thousands of miles to the burden of administration and of management. We were very anxious that the Union Pacific should receive as much of the administrative ability and of the railroad genius of Mr. Harriman as it was possible for him to give it, and we were rather disinclined to put upon him any more burden than was necessary to the best development of the Union Pacific; and therefore we, individually, felt that if the Southern Pacific could be separated, keeping only the Central Pacific and the North and South lines in California, and getting rid of the southern part of the Southern Pacific, we would be getting rid of a nuisance.

Would have preferred the S. P. apart from the Sunset line.

"Q. That is, if you could have gotten rid of the competitive line by the Sunset Route it would have been a distinct advantage to the Union Pacific? MR. DUNNE. I object to the question because

it assumes that the Sunset line was a competitive line of the Union Pacific. That is a (4732) question that will be passed upon by the Court, and I do not think it should be assumed in questions put to the witness. WITNESS. Not because of its competitive feature, as you call it. It did not strike us at the time, and I am not clear in my mind at this day, until there is a judicial determination of the question, whether or not the Sunset Route was a competitive line or is a competitive line. To demonstrate, that competitive feature in no way influenced us one way or the other at the time. Before we bought the Southern Pacific, we asked, as we always do, that the legal aspect of the transaction be reported upon by our counsel, as to whether it was an entirely safe transaction for us (my firm, I mean) to undertake, or whether there were any legal obstacles of any kind, and we were informed that the only possible legal obstacle to our acquiring that stock, and the possible acquisition of it by the Union Pacific, if it should so determine, was the question of the Southern Pacific being a holding company and not a railroad company, as otherwise there was not any possible question of any legal obstacle in the way. So the competitive feature never entered our minds.

Legal advice.

Competitive feature of Sunset not considered.

* * *

"Q. But as I understand you, then, the sole thing that you had in mind, as far as you yourself were concerned, in connection with the acquisition of that Southern Pacific stock, was, first, to secure sufficient of the stock to give the Union Pacific control; and, second, through that control, to keep possession of the management of the line from Ogden to San Francisco. Is that a fair statement of what you said? A. Of the line from Ogden to San Francisco, and of the north coast lines in California which were considered valuable feeders in bringing business to and taking business from the transcontinental line, from Omaha to the coast. The southern part we did not care for at that time. Meanwhile, I believe, through Mr. Harriman's genius and Mr. Harriman's admirable management, and the management of those who were associated with him, those southern lines have become valuable parts of the Southern Pacific, but that situation, as far as my knowledge goes, did not exist at the time we bought the Southern Pacific." (4733) I was in Europe when Mr. Harriman died, not returning until October, and did not resume my position on the U. P. board and executive committee, succeeding Mr. Schiff, until about two months ago.

The Sunset line, by excellent management, has become a valuable part of the S. P.

(4734) The only additional stock purchased since the date of the purchase of the preferred stock, was in January of this year, 74,000 shares. "These 74,000 shares were bought for the following reason: A bill (so we were informed) was introduced in Congress, or contemplated to be introduced in Congress, which would give to those railroads that had 50 per cent. of the holdings of another railroad (competing or otherwise) the right not only to retain that 50 per cent., but, if they so chose, to purchase the balance, in addi-

Additional S. P. stock purchased in January, 1910.

tion to the 50 per cent., whilst railroads that had less than 50 per cent. had no such assurance. Thereupon, upon the advice of Judge Lovett, it was deemed in the best interests of the Union Pacific that its holdings of Southern Pacific stock should be increased to a total of 50 per cent. of the entire outstanding amount of the Southern Pacific stock. A few weeks afterwards Judge Lovett advised the executive committee that the terms of the bill, as he had understood them, had been changed, or were going to be changed, and that the provision to which he referred and which was the reason for the purchase of additional Southern Pacific stock, would not go into the bill, and Judge Lovett advised in consequence that the purchase of additional Southern Pacific stock be stopped at once, and it was stopped on the same day, and no more stock has since been acquired.

"With these 74,000 shares which have been acquired under the circumstances I have related, and which are more fully set forth in a resolution adopted by the executive committee, and which is of course at your disposal, and deducting 50,000 shares which, upon the order of Mr. Harriman, were sold last summer, because Mr. Harriman thought it did not make any difference whether the Union Pacific (4735) had 50,000 shares less, and he thought the company had good use for the money,—I say with those additional 74,000, and deducting 50,000 sold, the Union Pacific or Oregon Short Line's total holdings of Southern Pacific stock has been increased by 24,000 shares over and above what they were, and that gives the Union Pacific or Oregon Short Line a total holding of Southern Pacific stock amounting to 46 per cent. of the outstanding capital stock of the Southern Pacific." We would have required, roughly speaking, 154,000 additional shares in order to accomplish the acquisition of 50 per cent. of the stock at the time that purchase was undertaken in January. That is more than twice the quantity that we actually bought.

Total holding of S. P. stock 46 per cent.

The stock was purchased by Kuhn, Loeb & Co. in the market through brokers, the purchasing being stopped about January 10. The provision from pages 26 and 27 of Bill 21,232, an amended bill, pending in the House of Representatives, is "not the provision which, becoming known, induced Judge Lovett to stop buying. The provision to which he referred (4736) was a provision which he understood the law contained or was to contain, that a railroad owning 50 per cent. of the stock of another railroad would be allowed to remain in possession of that 50 per cent.; that its possession of that 50 per cent. would not be contested, and that it was at liberty to buy additional stock beyond that 50 per cent., and that, without any restriction or any 'ifs' or 'buts,' was his understanding of what the law would contain. He found out later that the law was not going to be such as he had understood it was going to be, and when he found that out he stopped further purchases. * * * Q. Now, the

Bill pending in congress.

Union Pacific had complete control of the management of the Southern Pacific, with power to elect the board of directors, and had done so from 1901 down, hadn't it? A. Yes. Q. Previous to this purchase? A. Yes. Q. It was not in any sense necessary to purchase this additional stock to give the Union Pacific control of the Southern Pacific, was it? A. Absolute control, yes. It is always possible—I know a case in point—it is always possible, even if you own 45 or 46 per cent. of the stock of a railroad, for the remaining 55 or 54 per cent., if it is worth their while and there is sufficient reason for it, to combine and make an active canvass against you and turn you out. It has happened.

Always possible for remaining 54 per cent to organize and control.

"Q. But you were not impelled to make that additional purchase on that ground, because you had had the control from 1901 down? A. The Union Pacific have been able to keep control, but there was always a possibility that the control might be disturbed, and inasmuch as Judge Lovett felt that the law was going to authorize us to hold up to 50 per cent., it was in every way better to acquire up to 50 per cent.; and moreover, if we had held 50 per cent. we could have gone on and bought the entire capital stock if we thought it was the wise thing to do. But Judge Lovett is better able to give you his reasons than I am." (4737) As to whether the Union Pacific started in to purchase this additional stock, which, if it purchased, would have made up 50 per cent., with the expectation that an Act of Congress would be passed validating the ownership of 50 per cent. of the stock of a competing line by a railroad corporation, "I think the answer could be much better given by Judge Lovett, who advised the purchase, and the answer is embodied in a resolution of the Executive Committee which was passed at a time when I was not a member, and I should think that others are much more competent to answer that question than I am." The O. S. L. having disposed of 50,000 shares last summer—Mr. Harriman gave the order to sell, not through Kuhn, Loeb & Co., I don't know how he sold them—the 74,000 purchase made a net increase of 24,000 shares.

Mr. Gould a party who tried to buy S. P. stock.

I mention Mr. Gould as one of the parties reported to us as endeavoring to buy S. P.—that was in the end of 1900, or the beginning of 1901, after Mr. Huntington's death. As to efforts being made in this direction by other interests, "I could not so exactly divide it, whether it came to us just exactly before August, 1900, or after August, 1900; I don't know. In a general way, the impression in our mind—it was more than an impression, because in some cases it amounted to knowledge—was (4738) that first, in at least one instance, we know of a positive effort that was being made; in at least one other instance that I can remember it was reported credibly that an effort was being made; and, secondly, after the death of Mr. Huntington, there was a continual position of latent possibility of the sale of the Southern Pacific, inasmuch as it was

Mr. Huntington's stock known to be in the market.

known to be in the market. Mr. Huntington's stock was known to be in the market, and there was other stock which was known to be in the market. Therefore there was at that time, when Mr. Huntington died, both the opportunity and the danger of the Union Pacific. It was then its time either to get the Southern Pacific or lose it irrevocably."

Negotiations with the executors.

We were informed that Mr. Gould was desirous of buying the Huntington stock. The Huntington executors were H. E. Huntington, I think, and Mr. Tweed and Mrs. Huntington, as far as I can remember. The negotiations with the executors on behalf of our firm for the purchase of the stock were conducted largely by ourselves, Mr. Schiff and myself, with the co-operation of Mr. Harriman. The negotiations were conducted by Mr. Jacob H. Schiff, Mr. E. H. Harriman, and myself. The negotiations for the actual acquisition materialized very rapidly, I should say in not more than two weeks, coming to a head at the end of January, 1901. It was not within a very few days after Kuhn, Loeb & Co. took over the Huntington stock that it was turned over to the Union Pacific. (4739) "There was first of all the time when an agreement was made—a verbal agreement—that the purchase would be concluded, and when a contract was made. That, as far as I remember, was the first half of January. Then came the actual execution and the payment and actual delivery. That, as far as I remember, was on the 5th of February, 1901, and it was between the date of the making of the contract and the date of the actual payment that our negotiations with the Union Pacific had been brought to a close."

Letter to Board.

In my communication to the board I said: "We have purchased 432,700 shares of the Southern Pacific stock of the Southern Pacific Company of Kentucky, to be paid for as follows: 144,233 shares on February 11; 268,467 shares on, or at our option before July 10, with interest at 4 per cent. per annum from February 11, all said shares to be deposited with a trust company until entire payment is completed. We have further purchased the following shares: 200,000 shares to be paid for on, or at our option before March 4th; 45,000 shares to be paid for, one-half on February 5th, and one-half on January 8th. The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share." It was a very few days after sending that letter that the U. P. took over the stock, but that letter would be perhaps three weeks after the actual closing of the negotiations and the mutual taking over of the obligation by us. Nobody shares with us in that purchase. The $40,000,000 of convertible bonds were issued for the purpose of paying for the stock. These negotiations with Mr. Hill relative to an interest in the Burlington purchase were later. "Almost immediately after. The point of time, of course, was not determined by us but was determined by the acquisition of the Burlington by the Hill interests, and it so happened that that

Negotiations with Mr. Hill as to Burlington, were later.

point of time almost coincided with our acquisition of the Southern Pacific, and we immediately took it up."

(4740) I did not know that immediately following the purchase of the S. P. stock the contest arose over the construction of the San Pedro road. The executive committee had general knowledge of it, but Mr. Harriman had special charge of it. As to my stating that Mr. Gould was trying to buy control of the S. P., I said that Mr. Gould was reported to us to be desirous of acquiring the control. As to whether I learned that he was in negotiation with Mr. Huntington and Mr. Tweed and Mrs. Huntington, I do not remember the details of that. I know it was credibly reported to us that Mr. Gould was desirous of acquiring, or thinking of acquiring, or planning to acquire, the Huntington holdings in the S. P. How far he went in carrying out the intention I do not know. He was still a member of the U. P. board, I think. The other people that we understood were thinking of buying, or were being urged to buy rather—I understood were being more urged to buy than they were thinking of buying—were the Burlington people, Mr. Perkins and his associates, with whom Mr. Harriman had had negotiations in 1900 which were discussed with our board—for the purchase of the holdings of the people who were then controlling the Burlington, a New England element represented chiefly by Mr. Perkins of Boston, these hoidings, in so far as any compact holdings were there, amounting to from 10 to 15 per cent. of the stock.

Mr. Gould was desirous of acquiring control.

(4741) Mr. Perkins was President at that time. We were very far from assuming that if we bought the stock from Mr. Perkins and his associates we should acquire the control ourselves; it was not in the slightest degree the idea then in Mr Harriman's mind. He did not want any control of the Burlington, he wanted the situation with the Burlington to remain as it was. There were 85 per cent. of the stockholders left—all stockholders are unorganized, but it is not only the few men in the directorate who determine the future of the property. The 10 or 15 per cent. that we wanted happened to be a holding which was for sale, and we wanted sufficient influence in the Burlington to preserve the then existing situation. There is a very large difference between a negative and a positive influence. (4742) "I think 15 per cent. of compact holding in any property is sufficient to prevent stockholders being stampeded. It is sufficient to form a nucleus for opposition to any scheme which those 15 per cent. consider unwise and not in the interests of the property. It is a compact and therefore an influential minority holding, the value of which is mainly in the negative, mainly in the power to oppose infliction and to enforce publicity far more than in its positive value. 15 per cent. have no positive power to control; neither does 30 per cent. give positive power of control."

Wanted the Burlington to remain as it was.

15 per cent happened to be for sale.

15 per cent an influential minority.

As to assuming that 15 per cent., at least temporarily, in the absence of affirmative action by the 85 per cent., would give us control of the management, "I would not so assume unless there was a

separate and distinct understanding going with it that the 15 per cent. was purchased under an understanding that the management would be turned over to the purchasers of the 15 per cent.,—and such understanding was never made and was never contemplated."

Expected to be consulted.

We had nobody in mind to manage the property, but expected to be consulted as anybody with 15 per cent. would have a right to expect. I did not say that we would buy out Mr. Perkins and buy out the gentlemen associated with him who had been running the Burlington for many years. "I said the proposition was that Mr. Perkins was an old man and his main associates in part were willing to retire and sell out. The board of the Burlington did not consist entirely of old men; there was a good deal of young blood in it and they would not all retire with Mr. Perkins. It was not even said that Mr. Perkins would retire entirely from connection with the property. He might have remained as the advisory head, and certainly his opinion and the opinion of those who in the past had the management of the property, would go a very long way in determining the choice of their successor. * * *

(4743) "We expected, before Mr. Perkins retired and before his associates on the board retired, that they would see to it that the management of the property would be continued under a properly qualified head. We did not expect the men who had devoted their lives to building up the Burlington would retire precipitously and leave the thing in chaos and say 'Now, you with your 15 per cent., do as you like with the property; it does not concern us any more.' They naturally would have had a good voice in electing their successors, but we expected to be consulted to the extent that any important stockholder is consulted when a change takes place in a property. * * *

Did not want existing relations with Burlington endangered.

We expected to have no voice whatever in the management except to the extent we wanted to prevent anybody else from exerting an influence which would endanger the existing relationship between the Union Pacific and the Burlington. That was our whole object, and beyond that we were not interested in having any voice. * * * We expected to have sufficient of a voice in the selection of new officers to make it plain to us that those men would be men that were not under the influence of anybody whose purpose was to break up the relationship which had existed for many years between the Burlington and the Union Pacific. * * * The relationship was one of active competition, but of fair competition. In addition to fair competition, there was a good deal of business which the Burlington gave to the Union Pacific, and which, if it chose, it could give to others."

(4744) I could not mention offhand where the Burlington gave the U. P. business, not having looked at their connecting points for ten years; I took the word of our railroad advisers for that. "It is very hard to define words unless you have a Webster Dictionary right by your side. Fair competition is, I think, a term

Fair competition.

which is very generally understood, without my defining it any further. I do not believe I could add anything to the general understanding of the term 'fair competition.' It means no cut-throat competition, no underhanded methods. It means active but fair. I could not define it any better than that." I would consider it fair competition that the Burlington and U. P. had soliciting agents in the field, and were each trying by fair methods to secure competitive business. It was not in our minds that the Burlington might build more lines into U. P. territory, nor did we attach any particular importance to that. The U. P. was strong enough to hold its own, and if the Burlington built into U. P. territory the U. P. would have retaliated, and after some trouble both would probably have realized that they had been very foolish.

U. P. strong enough to hold its own.

(4745) Such a thing is foolish "unless there is sufficient business there to justify it, and I think it is foolish for mere spite or for mere lust or aggrandizement, to invade another fellow's territory when he is giving good service, and when there is not sufficient business there for two lines—either there or likely to be developed. * * * If the act of the Burlington was an act of aggression, not justified by economic reasons, the Union Pacific doubtless, without wasting its resources in a similar wanton aggression, would have protected itself in one way or another as would have seemed best to those in charge of the Union Pacific's railroad business." The U. P. board, executive committee and officers would have been very largely guided by the advice of Mr. Harriman in whom they had the utmost confidence. It was very far from what was in our thoughts to prevent any such thing as a wanton attack, or any attack, that we desired to have an influential voice in the Burlington, and to maintain the existing status. "I have said it repeatedly, and will say it again, but I cannot say it in any other terms than those I have already expressed. In our thoughts was the menace or the danger to the existing relationship between the Union Pacific and the Burlington, who had been competitors for many years, but who trusted each other, who considered each other fair, who obtained, so far as the Union Pacific is concerned, a good deal of business from the other; the thought in the minds of the Union Pacific people when they wanted an interest in the Burlington was to have some kind of a voice in it, was to maintain that status—not to have anybody come in there and disturb a relationship which had been satisfactory for many years to the two properties and to the shippers. * * *

Invading "another fellow's territory."

Wanted to maintain status.

(4746) "The competition we were entirely content with. It was there; we knew it could not be eliminated, and we knew it had to continue whether we wanted it or not, and we knew that any attempt to eliminate that competition would not be tolerated. * * * Would not be tolerated by the people and by the minority stockholders or the majority stockholders of the Burlington and by the Government, and that it was a thing utterly incapable of accomplishment if we should try to accomplish it, which we never did.

Knew that the competition could not be eliminated.

What we wanted to preserve was, first of all, competition with people whom we had learned to respect as fair competitors, and secondly, the maintenance of that business for the Union Pacific which the Union Pacific got from the Burlington and had been getting for many years." I suppose the Burlington interchanged business with the U. P., but the question would be how much the Burlington was dependent upon the U. P., how much the U. P. on the Burlington. "I know nothing about it except only at the time these negotiations were under consideration, with Mr. Harriman, whose advice we took unhesitatingly in all railroad matters, told us (4747) that the preservation of the Burlington business for the Union Pacific was of great value to the Union Pacific—and he generally knew what he was talking about."

The preservation of Burlington business, of great value.

Our purpose was to maintain the situation which had been mutually advantageous and satisfactory for many years, and which we did not wish to see disturbed. We did not go into the market to buy 15 per cent. of other Burlington stock, because "the conduct of negotiations at that time was going on and by the time those negotiations were off, the negotiations with Mr. Hill began and after the negotiation with Mr. Hill began we did not touch the market—we didn't want to." I was present at one or two meetings with Mr. Hill, but they were conducted by Mr. Harriman primarily, and Mr. Schiff also. Our proposition was for the U. P. to have a third or a half of the stock of this road, which I say was both a competitor and a connecting line—a competitor in the actual sense of the word, for local business to a certain extent; to what extent a competitor in the legal sense I do not know to this day. (4748) I use local business in distinction from business which is transcontinental. "I think when it comes to defining railroad terms and technical railroad matters you have me at such a disadvantage that I am not going to enter into the discussion, because I do not believe in matters which require technical knowledge of railroads you can get anything out of me which would be of the slightest advantage to you. I am a banker and a financier, and not a railroad man.

Meetings with Mr. Hill.

"Q. A very able one, Mr. Kahn, and you have been a frank witness, and it is a great pleasure to ask these questions, but when you use an expression it seems fair I should ask you what you mean by it. Now, you say they were competitors on local business? A. Yes. Q. Will you kindly tell what that local business is concerning which they are local competitors? A. I don't believe I could tell that because I am quite frank to admit that on all railroad questions we would take the opinion of Mr. Harriman, and Mr. Harriman would tell us that on such and such business, using the term 'local business,' they are competitors,—and on such and such other business they are not competitors, and we would take his word for it. We did not go behind the meaning of his terms, or re-examine and check whether his statements were correct. We would follow his

Took Mr. Harriman's opinion on all railroad questions.

conclusions so far as the railroad end of the proposition was concerned, without examining into it ourselves." Mr. Hill gave us a flat refusal. As to the original matter, "I said as far as I remembered it was from 10 to 15 per cent., and 10 to 15 per cent. would have been ample in the case of the situation (4749) as it existed before, through Mr. Hill's entrance into the situation, the compact and formidable holding of Burlington stock was concentrated in one hand. Therefore, the situation changed radically when Mr. Hill came in. The thing that we were after was not a third but a half. When a half was refused we went as low as a third. What we were after was a full half. * * *

"We had not the slightest objection to an enlargement of the competition, or to anything which was proper for the Burlington. We simply did not want the Burlington to be dominated exclusively by interests which were antagonistic to the Union Pacific, naturally and necessarily so, and which would, and doubtless did (although I have not followed it up) interfere with the relationship that hitherto had existed between the Burlington and the Union Pacific." As to the N. P. and G. N. being hostile to the U. P., "I have already explained it this morning: that Mr. Harriman came into the railroad situation as a new element and a disturbing element. When any strong man suddenly appears on a scene where there is a nicely adjusted balance of power, and asks to be considered, and asserts claims, he becomes a disturbing element and arouses animosity. The Union Pacific for many years has been a weak line and had been looked down upon by its more prosperous and more powerful neighbors. That the attempt to make the Union Pacific as strong a line as any other and as big a power as any other could meet with anything but antagonism and animosity, would be to have a faith in human nature which I do not possess, and the attempt on the part of the Union Pacific to grow up and become strong and aggressive certainly did meet with antagonism and animosity."

Did not want the Burlington dominated exclusively by antagonistic interests.

The attempt to make the U. P. a strong line aroused antagonism.

I don't know of any objection when the U. P. acquired control of the O. S. L. and O. R. & N. to Portland, where the N. P. had a through line, and tide water. That was merely re-establishing a situation which had always existed. (4750) The U. P. re-established itself not quite as it was before, but at least it got the O. S. L. and the O. R. & N. back. Mr. Harriman and Mr. Schiff—I may have been present—notified Mr. Hill that if the Burlington purchase was carried through without the U. P. obtaining proper protection, either in the way of joining in the purchase or otherwise, if it was otherwise possible, the U. P. would be compelled to protect itself as best it could. I think it was also told to Mr. Bacon of J. P. Morgan & Co. The response was that the U. P. could not be admitted, that they must leave us to do as the protection of the interests of the U. P. required us to do. It is not a fact that the U. P. undertook to buy the 74,000 shares of stock of S. P. because the U. P. manage-

U. P. would be compelled to protect itself.

ment determined that this would be the easiest way to defeat this pending suit—by getting 50 per cent. of the stock and having legislation authorizing the buying of the balance—no, the U. P., as far as I know, is entirely confident that it will defeat this suit on its own merits.

Reasons for wanting 50 per cent of U. P. stock, explained in resolution of executive committee.

(4751) As to why we wanted to buy enough stock to have 50 per cent. and come within the terms of this proposed Act of Congress, "the answer to that is contained in a resolution by the executive committee. It can be explained by Judge Lovett, who is the author of that resolution. I was not a member of the board or the executive committee at the time, so my explanation would be a great deal less lucid and authoritative than his." Recurring to the Burlington, "we set our heads to thinking how we could retrieve that situation, and we reached the conclusion that the simplest and the most effective way was to buy control of the Northern Pacific, for the purpose (through that control) of having 50 per cent. of the Burlington stock." It took us three months to buy it, getting a clear majority, most of it preferred stock. (4752) The stock was put in the Northern Securities Company, from which we received back certain G. N. and N. P. stock, which we have since sold.

Best way to retrieve situation was to buy control of N. P.

Investment in Santa Fe stock.

As to the acquisition of the $10,000,000 of Santa Fe stock: "I want to make it clear. I did not say I had invested or had any share in the investment, because I was not a director of the Union Pacific at that time. I simply explained, in answer to a question, what the situation was, as I understood it, with which Mr. Harriman and the Union Pacific then found themselves confronted in the reinvesting of an enormous amount of cash, which they had on hand. I did not express an opinion as to whether they acted wisely or unwisely. I had no share in it. I simply explained the situation."

Capitalization of U. P.

None of this money had been reinvested at the time I left the board. Most of it, not all, was reinvested through our house—in the summer of 1906. The present capitalization of the U. P. including the outstanding convertibles, is, roughly speaking, $240,000,000 in common stock, and $100,000,000 in preferred. (4753) I think very little stock has been issued since the $100,000,000 that took the place of the convertible bonds; I think all that has been issued since then has been $75,000,000 of convertibles, equivalent to 40,000,000 of stock. "We pay 6 per cent. from the railroad and you pay 4 per cent. on the separate capital which we have raised for the purposes of investment. So it does not encumber the road any. We are paying no more than 6 per cent. from the earnings of the railroad, and the remaining 4 per cent. are, free and clear, from the income from investment. So it doesn't burden the property any that I can see." We are paying 10 per cent. on $100,000,000 stock issued in exchange for the convertible bonds, $10,000,000 a year; we earn more than the whole of it from the income from investments. (4754) The 10,000,000 of Atch-

Paying 6 per cent from earnings of railroad, and 4 per cent from income from investments.

ison stock was sold at cost early in 1909. As to why we sold the Atchison stock instead of some of the others, it "is not always quite easy to give an answer which requires one to unravel the trend of thought in Mr. Harriman's brain. I am trying, in answer to your question, to find the particular reason why Mr. Harriman selected that particular parcel of stocks to sell. Perhaps, if you will give me time for thought, I may remember it. It is a year and a half ago now."

Bought N. P. to secure 50 per cent of Burlington.

In buying the N. P., our sole purpose—there was no primary or secondary purpose—was to have 50 per cent. of the Burlington stock, inasmuch as the G. N. had the other 50 per cent. The result of the transaction if it had been carried through would have been the control of the N. P., and a half interest in the Burlington, but we started to buy the stock because there was no other way of getting protection, so far as the Burlington is concerned, from the old trouble which I have repeatedly referred to heretofore—protection from a disruption of the existing relationship between the Burlington and the U. P. It was not a protection in the slightest degree against an extension of competition between them. (4755) I think very little about competition in these matters, "because I think it is folly for anybody to believe that he can control or check or materially diminish competition; and I have never believed in the possibility of doing away with competition. I have never believed in the desirability of doing away with competition. I think it is an utopian idea. Q. You simply believe in the control of competing systems by the same individual, feeling that he could not possibly eliminate competition even if he did control it? A. I do not believe even in that. I have no principles or theories or beliefs on that subject.

"Q. You were giving a theory a moment ago. You said any idea of eliminating or shrinking competition was utopian. A. I did not say 'shrinking;'—I said 'eliminate.' Q. What do you think about shrinking, then; is that utopian? A. Does not this call for an interposition on the part of my counsel? Must I give opinions? * * * When it comes to my expounding theories on railroad matters, it is really a waste of time—of yours, of mine, and of the Judge's, and it is loading up this record with stuff of no earthly weight or interest to anybody. If you want my opinion on banking and finance I am in a position to give it, but in railroad matters I am a layman and not an expert. * * * (4756) Q. Trade would be restrained in one way, by eliminating competition, wouldn't it? That would be one way of restraining trade? You meant that by your answer this morning, didn't you? A. No, my answer was not to an abstract question, but to a definite and concrete question. The question was, In anything you have done, was it your purpose or object to restrain trade or to conspire to monopolize, or whatever else may be charged against you in this formidable bill? and my

No purpose to restrain or monopolize commerce.

answer was a sweeping denial that any such thing entered our head. It was the concrete, and not the abstract."

Could not acquire the Central Pacific without buying S. P. stock.

As to the acquisition of the S. P. stock by the U. P., and the intention to place the two companies in one control, of course we could not help ourselves, we could not get what we wanted in any other way. If we could, we would have preferred it. We needed the Central Pacific, and we could not acquire it in any other way. We tried to and failed. We did not intend by what we did, by the acquisition of the S. P. stock, to place under one control the U. P. system and the S. P. system. "We bought at that time 40 per cent. of the S. P. stock. We did not change the management—Mr. Hays remained as general manager. We did not displace, as far as I know, a single one of the men in the conduct of the business until then; and whether that management was our management or anybody else's management was quite immaterial to us, as long as it protected our vital interests in the Central Pacific." We made Mr. Stubbs director of traffic, (4757) and Mr. Kruttschnitt head of maintenance and operation of both systems, Mr. Harriman becoming chairman of the boards, and later on president of both lines. I did not say that we did not make any common management, I said we did not care whether the management was common or not —doubtless it was economy to both properties. As to the details of the management in respect to consolidation of agents or offices, I am guessing at these things, I cannot answer as to details of the railroad management—whether in respect to agents or to Mr. Stubbs, or to the separate freight and passenger traffic managers of the systems.

Management of the properties.

Control of the Rock Island.

(4758) When Mr. Harriman came to me in 1901 with a proposition to buy control of the Rock Island, he proposed to buy a part of it in the market, and part of it from large holders of the stock. There would have been no earthly object in buying it, unless it had been our intention to try to restrain trade and control the avenues of trade to the Pacific Coast, in which case the Rock Island would have been important, but we had no such idea, and we turned it down. Mr. Harriman could have had other reasons, the reason that it was a cheap purchase—it was cheap, and the people that bought it afterwards made money out of it. "Q. You stated a moment ago that there could have been no reason for making that purchase except for the purpose of carrying out what you are charged with in this bill. Now, you mean by that, do you, that Mr. Harriman had the distinct idea of getting control of another competing road when he came to you with the proposition that you turned down? A. I said *if*. I said there would have been an object in doing that *if* the idea had been in our heads. As the idea was not in our heads, there was no object in buying that property except on the ground that it was cheap, as we advised Mr. Harriman. We admitted it was cheap at the time and admitted money could be made out of it, but we told him he had burden enough on his shoulders, that the Union

The U. P. and S. P. burden enough.

(4759) Pacific and the Southern Pacific claimed his time and energy, and we advised against putting any additional burden upon his overtaxed shoulders, and he at once agreed and said 'You are right; we had better leave it alone.' Q. But you bought an interest in other lines, and he went on their boards and participated in the management? A. But that was afterwards, when the Union Pacific and the Southern Pacific had been developed to such a degree and established in such splendid working order that his immediate and personal attention to every detail was not required any more; it was still required, but not to the extent that it was required in 1900 and 1901, which were the years of its greatest development."

The Rock Island matter was, I am pretty sure, during 1901, but after we had bought the S. P. stock, and after we had bought the N. P. stock. "Q. Now you spoke of one other line—the Atchison? A. Yes. Q. Did Mr. Harriman come to you with the proposition to buy that line? A. Let me say this first: If I say Mr. Harriman came to us with the proposition, that does not mean that Mr. Harriman was acting actively. I mean that he was passive. He came to us, and he brought us a proposition. He said, 'This proposition has been submitted to me. What do you think about it?' It was not that he came and said, 'I make you a proposition.' He said 'I bring to you a proposition submitted to me by'—somebody else. I want to make that plain. Q. I am asking you a question now about the Atchison. Did he come to you with a suggestion that you buy an interest in the Atchison? A. Never. Q. Who got up the syndicate that bought the $30,000,000 of Atchison stock which you have been talking about? A. I would hardly call it a 'syndicate'—a few business associates getting together to buy a stock which they considered cheap. It is done every day without the solemn name of 'syndicate.' Q. Well, you didn't buy $30,000,000 after all, did you? A. Yes; within a few thousand shares, more or less."

Mr. Harriman merely brought proposition submitted to him.

He did not suggest buying an interest in Atchison.

(4760) Shortly after buying the $30,000,000 Santa Fe stock in 1904, we applied for membership on the board; "we were entitled under the law to two directors, and having a large interest in that property we did not see any reason why (4761) we should not avail ourselves of our legal privilege of having two directors." Mr. Harriman may have desired to go on the board and executive committee of the Santa Fe, because he may have thought that he could do good to both properties. We never requested it; we never thought it should be done; we agreed with Mr. Morawetz about that. "We desired to have two gentlemen in whom we had every confidence, whose ability and wisdom had been thoroughly tested and who were thoroughly satisfactory to both sides, to go on the Atchison board. At the same time the fact that they were directors of the Union Pacific we did not consider a detriment." We were simply representing an investment of $30,000,000, and we thought we were entitled to have our own men on the board. We sold our interest

Representation on Atchison Board.

in 1906. The Atchison people knew that we had sold our stock. We did not suggest to them that our two directors resign, it was up to the Atchison people, not to us.

(4762) They stayed on by the will and by the annual election of the Atchison stockholders, and not any longer at our request. I presume at the annual election, I do not know. "Q. Isn't it a fact that after landing your two directors you sold your stock and the directors stayed there until Mr. Rogers died, and the other director is still there and his time is not yet up? A. We sold our stock in 1906, which was after the landing (as you so prettily express it) of our directors. I think it was about a year and a half after the 'landing' of our directors, that we sold our stock. We informed the Atchison people that the stock had been sold, and the slightest intimation on their part to men of the standing of Mr. Frick and Mr. Rogers that their presence was no longer welcome in their councils would have been sufficient for them to resign immediately." The $10,000,000 of Atchison stock bought by the U. P. and sold since the beginning of this action at cost, was preferred stock; the 30,000,000 was common.

The Atchison informed of sale of stock.

NEW YORK CITY, TUESDAY, MARCH 8, 1910.

Kelly.

(4763) W. R. KELLY

Los Angeles, Gen. Counsel, San Pedro.

"Question 1. I will ask you, Judge, to state what, if any, official relations you bore prior to 1901, towards the Union Pacific Railway Company, Union Pacific Railroad Company, the Oregon Short Line & Utah Northern Railway Company, and the Oregon Short Line Railroad Company. Answer. In 1888, I was General Attorney for the Union Pacific Railway Company for the States of Nebraska and Iowa. About 1889 I was made Assistant General Solicitor for the Union Pacific system, which embraced the Union Pacific Railway Company and the Oregon Short Line & Utah Northern Railway Company, and other lines, and continued to act as such until and during the receivership of both companies which will be hereafter mentioned. I was made General Solicitor for the Receivers of these lines on January 10th, 1896, and continued to act as such until the respective lines were taken over by purchasers at foreclosure sales. In July, 1898, I became Solicitor for the Union Pacific Railroad Company. About the early part of 1901, I was directed by the President or Vice-President of the Oregon Short Line Railroad Company to assist the Law Department of that road in those controversies which are hereafter mentioned, and either in that year or the next year I became General Solicitor for the Oregon Short Line Railroad Company, and continued to act for both as General Solicitor of that Company, until January 1st, 1905.

Gen. Solicitor U. P.

History of O. S. L. properties south of Salt Lake.

"Question 2. Will you give me a history of the ownership and of the title of the Oregon Short Line Railroad Company to its railroad lines and property existing and extending southerly from Salt Lake City to and into what is known as the Meadow Valley Wash, say

up to April, 1901. Answer: (1) The Nevada Pacific Railway Company was a corporation organized under the laws of the State of Nevada, under articles filed with the Secretary of that State on May 13th, 1889. It had (4764) corporate power, by Article 5, to build a railroad from a place called Summit on the eastern boundary of the State of Nevada, near the place where the old overland wagon road crosses said line on its way from Utah to Pioche, Nevada, the same being the terminal point of the Utah Central Railway; thence in a southwesterly course across the State of Nevada into and through the County of Lincoln to a point on the western line of said State of Nevada, about half way between the 35th and 36th degrees of North Latitude; also certain branches described therein. The place called Summit, fixed by the terminus of the Utah Central Railway, is substantially the point since known as Uvada. Nevada-Pacific.

"(2) The Oregon Short Line & Utah Northern Railway Company was a consolidated corporation organized on the 27th day of July, 1889. A copy of its Articles of Incorporation is found in Pacific Railroad Laws at page 213, and following. It was created by the consolidation agreement made between the: Oregon Short Line Railway Company, a corporation existing under the laws of the United States in the territories of Wyoming and Utah, and owning a line of railroad from Granger, Wyoming, to Huntington, Oregon, with branch lines in Idaho; also, The Utah & Northern Railway Company, a corporation of the territory of Utah, under an Act of Congress approved June 20th, 1878, making the same a corporation of Idaho, Utah and Montana. It owned a line of railroad extending from Ogden, in Utah, to a terminus at Garrison, Montana. O. S. L. & Utah Northern, a consolidated corporation. Its constituent companies.

"The Utah Central Railway Company, a corporation existing under the laws of the territory of Utah, owning a railroad extending from Ogden to Frisco, with franchises extending to the western line of the territory of Utah; Frisco is a point on what was commonly known as a branch line extending from Milford to Frisco, and the main line of the Utah Central was authorized to be extended from Milford to the Utah-Nevada State line. The Utah Central Railway Company was itself a consolidated corporation, consisting of what was formerly the Utah Central Railway and the Utah Southern Railway, and the Utah Southern Extensions Company; Also the Salt Lake & Western Railroad Company, a Utah corporation owning the railroad from Lehigh Junction on the Utah Central Railway to Tintic, in Utah, and certain branch lines; Also the Utah and Nevada Railway Company, a Utah corporation owning a railroad from a connection with the Utah Central Railway Company at Salt Lake City, westward into Tuele County, with a branch line; Also the Ogden & Syracuse Railway Company, a Utah corporation, owning a railroad connecting with the Utah Central at Syracuse Junction, a point about ten miles south of Ogden, and extending westward about 5.81 miles; Also the Idaho Northern Railway Company, a corporation under the laws of Wyoming Territory, owning a

railroad from a connection with the Oregon Short Line at Nampa, and extending to Boise City, a distance of 24.94 miles; and, (4765) finally, the Nevada-Pacific Railway Company, a Nevada corporation already referred to. This last named corporation is authorized among other corporate powers, to construct and connect its road with the Utah-Central Railway Company's road. It was proposed by this Company to build and operate a road from a point on the eastern boundary line of the State of Nevada near Pioche, in Lincoln County, and thence in a southwesterly course across the State of Nevada, to the western boundary of that State, with two branch lines.

Lines of constituent corporations.

"(3) It will thus be seen that of the constituent corporations, the Oregon Short Line was the original east and west line from Granger to Huntington, and the Utah & Northern Railway Company, the north line from Ogden to Garrison, while the Utah Central Railway Company was the south line from Ogden to Frisco, with a franchise extending to the western line of the territory of Utah, and the Nevada Pacific Railway Company was the line across the State of Nevada authorized to connect with this Utah Central Railway Company. The other roads were spurs out of the Utah-Central Railway Company, with the exception of the Idaho Northern Railway Company, which was a spur of the Oregon Short Line Railway Company from Nampa to Boise City.

"(4) The term of the consolidated corporation was fifty years. Its corporate name was the Oregon Short Line & Utah Northern Railway Company. Its capital stock was $24,789,039.33. By Article 10 of said Consolidation Agreement, the consolidated company had all the powers of each of the constituent companies, and one of the routes of the railroads constructed and to be constructed under the consolidation, was described in the Articles as a road from the terminus of the Utah Central Railway Company, through the State of Nevada. These Articles of Consolidation were filed in the office of the Secretary of State for Nevada, August 1st, 1889.

"(5) This consolidated company, the Oregon Short Line & Utah Northern Railway Company, made a consolidated first mortgage date August 1st, 1889, reference to which will be hereafter made in speaking of the foreclosure of that mortgage by the American Loan & Trust Company of Boston, which was the trustee named in the mortgage. On November 7th, 1889, the Oregon Short Line & Utah Northern Railway Company qualified itself under the Act of Congress of March 3rd, 1875, to obtain right of way through the public lands of the United States, by filing in the office of the Secretary of the Interior, in compliance with the regulations of the Land Department, approved January 13th, 1888, a certified copy of its Articles of Consolidation; also certified copies of the Incorporation Laws of the States of Nevada, Montana, Oregon and the territories of Wyoming, Utah and Idaho, those being the jurisdictions through which its franchise extended; also certificates from the Secretaries

O. S. L. & Utah Northern qualified to obtain right of way over public lands.

of those states and territories that the Articles of Consolidation had been filed according to law; also an official statement under the corporate seal that the consolidation had been completed, and that the Company was authorized to proceed with the (4766) construction of its road, and in this statement was included a list of the President and officers of the Company.

"(6) On November 1st, 1889, the Board of Directors of the Oregon Short Line & Utah Northern Railway Company, at a Board meeting, took up the proposed extension of the constituent Company, the Utah Central Railway Company, from Milford, a point in southwestern Utah, to Barstow, a point in the State of California on the line of the Santa Fe system. And the Board authorized the President to take the necessary steps to extend the present line of the Company's road from Milford southwesterly to Pioche, a distance of 120 miles. Pioche is a point in southeastern Nevada, in a mining region, and is reached by a short spur from Caliente in Nevada, north to Pioche. The main line construction, therefore, authorized was from Milford in southwestern Utah, to Caliente in Nevada. Caliente is in southeastern Nevada about forty miles from the Nevada-Utah line. Plans to extend road to Pioche.

"(7) On December 21st, 1889, the Board of Directors passed a resolution for the extension of the road from Frisco southwesterly, to the eastern boundary of Nevada, and thence to Pioche, Lincoln County, Nevada. Frisco is on a spur extending west from the main line at Milford and the relation, geographically, of Frisco to Milford is analogous to that of Pioche to Caliente, the one being in southwestern Utah, and the other in southeastern Nevada. And, for the purpose of extending the line to Pioche, the Board, as provided by its Articles of Consolidation, resolved to increase the capital stock from $24,789,039.33 to $27,000,000. At the board meeting on March 10th, 1890, the President submitted to the Board the approval as required by law, and said articles of the stockholders, to the increase of the capital stock. 205,132 shares united in the approval of the increase of capital stock. The Secretary of the Company was instructed by the Board to file the amendment to the Articles of Consolidation, thus increasing the capital stock under the seal of the Company, in the office of the Secretaries of the several jurisdictions through which the franchises of the road extended. Increase of Capital Stock.

"(8) At the same meeting of March 10th, 1890, the question of surveys was taken up, and a resolution was adopted reciting that by direction of the Company, its chief engineer had caused to be made, certain surveys of the line of route of the company's road, and the surveys are set out in the resolution, numbered from 29 to 34 inclusive, and covering two 20 mile sections, one section of 13.29 miles, one of 12 miles, and one of 8.56 miles, and the last one, No. 34, not expressed in terms of distance, but over a tract containing ten acres. Surveys 29 and 30 cover a distance of 20 miles each upon the line of road in Nevada and towards Caliente, and the said route Surveys adopted.

shown of said surveys 29 and 30, was adopted by the board as the definite location of the road of the Company, and the same were directed to be filed in the office of the Secretary of the Interior as required by the regulations of the Department and the statute. (4767) Surveys Nos. 31, 32, 33 and 34 do not relate to southern construction. At this same meeting, the board approved the surveys Nos. 29 and 30 covering 40 miles, and being the surveyed line from Uvada to Caliente, and said line from Uvada to Caliente as shown by the maps was adopted by the board as the definite location of the road, and it was voted that the maps be filed with the proper local land officers in Nevada, Utah and Idaho, and in the Department of the Interior.

Survey between Uvada Caliente adopted.

"(9) At a meeting of the Executive Committee of the board held on March 28th, 1890, there was approved a map and survey of the line of route of the Company shown on Map No. 35, for a distance of 20 miles, and Map No. 36, covering an additional 10.41 miles, being the line from Caliente to Pioche. And the same were adopted by the board as the line of definite location of the road, and the maps were directed to be filed for approval in the manner provided by law. This mileage, namely the 40 miles covered by Surveys 29 and 30, and the 30.41 miles covered by Surveys 35 and 36, being in all 70.41 miles from Uvada to Pioche, was actually graded, and it was the subject of a controversy between the Short Line Company and the San Pedro Company, which will be hereinafter described. It may be said here for clearness that at the time of this meeting of March 10th, 1890, the railroad construction south in Utah had extended as far as Milford. Milford was the most southern point of actual railroad construction and operation, for there was an operated railroad to Milford at this time. South of Milford the railroad construction had not been made, but was provided for as already shown, and the surveys we have last spoken of took care of the line from Uvada to Caliente, and from Caliente to Pioche. Uvada is a point on the Utah-Nevada State line; hence its name, and the construction by the aforesaid surveys from Uvada to Caliente, and thence to Pioche, was the Nevada construction. These surveys did not touch the proposed construction in Utah between Milford and Uvada.

Survey between Caliente and Pioche approved.

Line from Uvada to Pioche actually graded.

"(10) On May 24th, 1890, the Executive Committee of the Board of Directors of the Oregon Short Line & Utah Northern Railway Company, upon estimates appropriated for 'Construction of line from Milford to Pioche' the sum of $2,803,400. I have not mentioned the filing of surveys and maps specifically as between Milford and Uvada, because this portion of the line was never in controversy between the San Pedro Company and the Short Line, although such maps were in fact filed by the Oregon Short Line Railroad Company, and approved by the Department.

Appropriation for construction of line between Milford and Pioche.

"(11) During this period, quite a number of votes were taken by the Board of Directors of the Oregon Short Line & Utah Northern Railway Company, selecting for approval by the Department, station

Selection of station grounds.

grounds for various portions of the line between Milford and Pioche. (4768) On September 25th, 1890, the Executive Committee of the Board of Directors of the Oregon Short Line & Utah Northern Railway Company, considered further maps and surveys of the line of the route of the Company's railroad as follows: Map No. 54, 20 miles southwesterly from Caliente toward the California line; Map No. 55, an additional 20 miles southwesterly from Caliente, and extending from the 20 miles mentioned in Map No. 54; Map No. 56, covering the next 20 miles southwesterly across the California State line; Map No. 57, covering the next 20 miles, still in a southwesterly direction and towards the California State line; Map No. 58, the next 20 miles, a distance of 20 miles southwesterly from the map last above referred to; Map No. 59, covering a distance of 20 miles next southwesterly from the map last above mentioned; Map No. 60, covering a distance of 20 miles further still southwesterly extending from the end of the section last above named; Map No. 61, another map of 20 miles extending still southwesterly toward the California State line from the end of the section last above named.

Approval of surveys beyond Caliente.

"The above maps and profiles, 54 to 61, inclusive, cover all the territory upon which the Company proposed to build its line southwesterly from Caliente to the California State line, except 14.42 miles, which will be hereafter described, and the above maps and profiles were, at said meeting, by the board adopted as the line of definite location of the road and the maps were approved and were forwarded to the Secretary of the Interior for his approval, and for filing in the Department, in order that the Company might obtain in respect thereto, the benefits of the Act of Congress of March 3rd, 1875, and the said maps were afterwards approved by the Secretary of the Interior pursuant to the regulations of the Department in force at that time. On November 5th, 1890, the Executive Committee again considered maps and surveys, namely Map No. 62, extending southerly or westerly from the end of a grant described in Map No. 61 to the California State line, a distance of 14.42 miles, and took the same action in respect to said map, as to its approval and the filing of the same in the proper land offices, and the said map was afterwards approved by the Department of the Interior. The above facts show the adopted line from the Utah State line to the California State line, and the adopted line for the branch to Pioche, all of which were approved by the Department of the Interior.

Maps approved covered road as far as California state line.

"There is no record in local land office at Carson City of date of first filings of U. N. & C. maps of February 23, 1899, Uvada to Caliente, but the engineer affidavits thereon were executed April 12, 1899, and the register and receiver at Carson transmitted the maps to the general land office at Washington on April 27, 1899, so they must have been filed in local land office between these dates. Maps of O. S. L. and U. N. numbers 54 to 61 inclusive were filed in local land office at Eureka, Nevada, on October 25, 1890, and were each

Filing of maps in local land offices.

Maps approved by Sec'y of Interior.

marked approved by the Secretary of Interior in the following language: (4769) 'Department of the Interior, November 22, 1890, Approved subject to all valid existing rights, John W. Noble, Secretary.' Map number 62 same company filed in U. S. Land Office at Eureka, Nevada, November 17, 1890, and Approved by the Secretary of the Interior on December 29, 1890, in same language as above. There is no record endorsed on maps 54 to 62 inclusive of date they were relodged in local land office.

Construction of grade between Milford and Pioche via Caliente in 1890.

"(12) In the year 1890 the Oregon Short Line & Utah Northern Railway Company, commenced construction at Milford and graded its line as a roadbed, practically complete, from Milford to Caliente, and very largely completed from Caliente to Pioche, and it continued this construction until October 14, 1890, when, by reason of the financial embarrassment of that Company and of the Union Pacific Railway Company, it suspended operation. As shown in the injunction suit hereinafter referred to, by testimony, the amount expended by the Oregon Short Line in grade construction from Milford to Caliente and Pioche was $979,647.24, and the amount expended upon said work within the limits of the State of Nevada, namely, from Uvada to Caliente and Pioche was $675,264.13. This last named work, and the value thereof, was the subject of the controversy between the parties as hereinafter set forth. At the time of the suspension of this work, the Short Line Company had laid some few miles of rails beyond Milford, probably three or four, but the track not being completed, and the construction of the work suspended, the rails beyond Milford were taken out.

Financial embarrassment.

Am't expended on grade.

Indebtedness of O. S. L.

"(13) It was shown in the injunction suit hereinafter mentioned, that on December 31st, 1890, the Oregon Short Line had a funded debt of $49,606,000, and a floating debt of $1,791,733.99, exclusive of the amount due contractors for construction work on its line between Milford and Pioche. That on December 31st, 1891, it was indebted to the Union Pacific Railway Company on advances and back account, in the sum of $4,639,531.68, which was in addition to the amount of its funded debt as of that date. It was also shown, and is true, that the said Short Line Company had pledged and hypothecated with the Union Pacific Railway Company, all of the bonds and stocks then owned by the Short Line Company, so that after September, 1891, the Oregon Short Line Company was without resources to meet its funded or floating debt, except from its current earnings. It was also shown in said suit that the income of the said Short Line Company for each of the years 1890 and 1891 was insufficient to pay the fixed charges; the deficit for the year 1890 being $1,396,682.84, and that the amount of such deficit for the year 1891 was $409,107.46.

All its securities pledged.

Income insufficient to pay fixed charges.

"Question 3. What was the relation, the inter-corporate relation, of the Union Pacific and the Oregon Short Line & Utah Northern Railway Company in respect to stock ownership at this time? (4770) Answer: (1) There was outstanding about that time, the capital stock of the Oregon Short Line & Utah Northern

Ownership of its securities by the U. P.

Railway Company in the amount of $26,244,853.32, of which the Union Pacific Railway Company owned approximately $13,116,703.33. The Union Pacific Railway Company also owned large blocks of the bonds of the underlying companies embraced within the corporate organization of the Oregon Short Line & Utah Northern Railway Company. (2) In the month of September, 1891, the Union Pacific Railway Company was also financially embarrassed, and unable to pay its debts, and at that time it hypothecated practically all of the stocks and bonds belonging to it, and in some cases to its sub-ordinate companies under the three year trust obligation known as the Drexel-Morgan Trust, to raise funds with which to pay its floating indebtedness. The amount raised in this manner was approximately $20,000,000. The financial embarrassments of the Union Pacific and of the Short Line Railroad continued, and by reason thereof, certain suits were instituted by Oliver Ames and others in the Circuit Court of the United States, for the Eighth and Ninth Circuits, in the territory of Utah, and in other jurisdictions, and Receivers for the properties of both of said companies were appointed in said suit on October 13th, 1893, and took possession of all of said properties.

U. P. also financially embarrassed.

Receivers for U. P. and O. S. L.—Oct. 13, 1893.

"(3) On October 8, 1893, Oliver Ames, Second, and Samuel Carr, Executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, as complainants, brought their suits in the Circuit Court of the United States, for the District of Nebraska, as the court of original jurisdiction, and in the Circuit Courts of the United States for the States of Iowa, Missouri, Wyoming, Kansas, Colorado, Idaho, Montana and Oregon, and in the Territory of Utah against the Union Pacific Railway Company, the Oregon Short Line & Utah Northern Railway Company, and all of the companies constituting and embraced within what was known as the Union Pacific system of railroads, stating the aggregate amount of the indebtedness of the said several roads and defendants, the capital stock, securities, the floating debts of each of them, the amount of indebtedness presently and from time to time maturing, and the indebtedness of the Union Pacific Railway Company to the United States of America, and prayed appropriate relief in respect of the several matters alleged in said bill, and amongst other things for the appointment of receivers in said several causes for all of the properties of the said defendants above named, and all of the defendants named in said suit. That on the 13th day of October, 1893, there was appointed in said several courts as receivers of the properties named and described in said bill Messrs. S. H. H. Clark, E. Ellery Anderson and Oliver W. Mink, and that on said day the said receivers took possession of all and singular all of the properties of all of the said defendants wherever situated.

Ames suit filed.

First three receivers.

(4771) "That on the 13th day of November, 1893, Richard Olney, Attorney General of the United States, in behalf of the United States, presented a petition in said courts for the appointment of

Two additional receivers.

additional receivers, and for other relief, as set forth in said petition, and that under the same such proceedings were had that on November 13, 1893, John W. Doane and Frederic R. Coudert were appointed additional receivers of said properties. On May 4, 1898, an order was entered in said several causes accepting the resignations of the receivers hereinbefore named as to the properties of a number of the said defendants named in said original bill including the properties of the Union Pacific Railway Company, the Oregon Short Line & Utah Northern Railway Company, and others, and the court by said order appointed Oliver W. Mink and Thomas P. Wilson, as successory receivers of the general properties of the Union Pacific Railway Company, the Oregon Short Line & Utah Northern Railway Company, and other of the defendants, and the said five receivers above named were discharged. Afterwards in said causes, on August 22, 1899, the said successory receivers were discharged as such as to all of the properties of the Oregon Short Line & Utah Northern Railway Company. At the time of the filing of the said Ames suit, the Oregon Short Line & Utah Northern Railway Company had outstanding capital stock in the amount of $26,244,853.32, of which the Union Pacific Railway Company had and owned $15,116,703.33, and it had outstanding securities issued by itself, or by its several constituent companies, the following mortgages:

Mink and Wilson appointed successory receivers.

Successory receivers discharged.

Mortgages of constituent companies.

"1. The Idaho Central Railway Company's first mortgage $131,000.00, of which the Oregon Short Line & Utah Northern Railway Company owned $1,000.00. 2. The Oregon Short Line Railway Company's first mortgage, embracing the line from Granger, Wyoming, to Huntington, Oregon, and the branch line from Shoshone, Idaho, to Ketchum, Idaho, in the amount of $14,931,000.00, all of which was outstanding. 3. The Oregon Short Line & Utah Northern Railway Company's consolidated mortgage, dated August 1, 1889, in the amount of $10,894,000.00, of which $161,000.00 was owned by the Union Pacific Railway Company, and its constituent companies. 4. The Utah & Northern Railway Company's consolidated mortgage, dated July 1st, 1886, embracing the line from Ogden, Utah, to Garrison, Montana, in the amount of $1,831,000. 5. The Utah & Northern Railway Company's Equipment Trust, Lawful Money Bonds, dated April 1st, 1887, in the amount of $36,000.00. 6. The Oregon Short Line & Utah Northern Railway Company's Collateral Trust, Currency Bonds, dated September 2, 1889, in the amount of $13,000,000.00, of which $17,000.00 were held in the sinking fund. 7. The Utah & Northern Railway Company's first mortgage, lawful money bonds, dated July 1st, 1878, in the amount of (4772) $4,993,000.00, of which $3,964,000.00 were held by the Union Pacific Railway Company and pledged by it. 8. The Utah Central Railroad Company's first mortgage Gold Bonds, dated January 1, 1870, in the amount of $1,000,000.00, of which $6,000.00 were outstanding, $1,000.00 were in the hands of the Treasurer of the Oregon Short Line & Utah Northern Railway Company, and $993,000.00 were held by the trustee under

the Oregon Short Line & Utah Northern Railway Company's consolidated mortgage. 9. The Utah Southern Railway Company's first mortgage, dated July 1, 1871, of which $424,000.00 were outstanding. 10. The Utah Southern Railroad Company's first (general) mortgage lawful money bonds, dated July 1, 1879, of which there were outstanding $1,526,000.00. 11. The Utah Southern Railroad (Company's) Extension first mortgage bonds, dated July 1, 1879, of which there were outstanding $1,950,000.00, $982,000.00 thereof being owned by the Union Pacific Railway Company.

"During the pendency of the above mentioned suit of Ames against the Union Pacific Railway Company, et al., from time to time, upon defaults occurring in the payment of interest upon certain mortgages of the said several defendants companies, or of underlying mortgages made by the constituent companies, or originally owning companies, and affecting separate portions of the said several properties, were from time to time brought in the courts of appropriate jurisdiction, and of said suits so brought against properties embraced in the railroads owned by the Oregon Short Line & Utah Northern Railway Company, were the following: (a) Joseph Richardson, Trustee, complainant, on August 30, 1894, filed his bill in the Circuit Court of the United States in and for the District of Utah, Idaho and Montana, against the Oregon Short Line & Utah Northern Railway Company, the Union Pacific Railway Company, the American Loan & Trust Company, and the Receivers above named, to foreclose upon $4,495,000.00 first mortgage bonds issued by the Utah & Northern Railway Company under its mortgage dated July 1, 1878, embracing the properties extending from Ogden, Utah, to Garrison, Montana, and in said suit on August 31, 1894, the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane were duly appointed receivers under said mortgage, of the mortgage properties therein described, and said receivers thereupon took possession of all of the said mortgaged property and operated the same as receivers in said cause until the final discharge of the receivers acting therein upon the purchase of said property by the Oregon Short Line Railroad Company, hereinafter named.

Separate foreclosure suits.

Richardson vs. O. S. L. & Utah Northern, et al.

Separate receivership for O. S. L.

"(b) On August 28, 1894, John F. Dillon, Trustee, complainant, brought bills to foreclose, in the Circuit Courts of the United States for the District of Wyoming, Idaho and Oregon, against the Oregon Short Line & Utah Northern Railway Company, the Union Pacific (4773) Railway Company, and the above mentioned receivers. This bill was one to foreclose a certain mortgage given by the Oregon Short Line Railway Company to Frederick L. Ames and John F. Dillon, as Trustees, on the date of November 1st, 1881, which mortgage embraced the property belonging to the Oregon Short Line & Utah Northern Railway Company extending from Granger, in Wyoming, to Huntington, Oregon, with a branch line extending from Shoshone to Ketchum, in Idaho. In said cause on said date the Court appointed the same five persons above mentioned as

Dillon vs. O. S. L. & Utah Northern, et al.

receivers of the mortgaged property, and they continued to operate said mortgaged property from the date of their appointment until they surrendered said mortgaged property, about March 15, 1897, to the Oregon Short Line Railroad Company, the purchaser thereof under the proceedings hereinafter mentioned.

Ham vs. O. S. L. & Utah Northern, et al.

"(c) On September 4, 1894, James M. Ham, as Trustee, and complainant, brought his bill in the Third Judicial District Court of Utah Territory, against the Oregon Short Line & Utah Northern Railway Company, the Union Pacific Railway Company, the American Loan & Trust Company, and the receivers above mentioned. This bill was brought for the purpose of foreclosing a certain mortgage known as the Utah Southern Railroad Company's general mortgage, dated July 1st, 1879, to William H. Hooper, and James M. Ham, as Trustees. On September 4, 1894, the said Court appointed the same five persons as receivers of the mortgaged property described in the said bill of complaint and mortgage, which property is generally described as the railroad of said company commencing at Salt Lake City, and running thence in a southerly direction to Juab, in said State of Utah, and the said receivers in said cause operated the railroad properties mentioned and described in the said complainant's bill as receivers therein until about March 15, 1897, when in pursuance of the orders of the Court in that behalf duly made, they surrendered the possession of the same to the purchasers thereof under a sale of said property under decree in the above entitled cause, and to the purchasers under a decree entered in the case of the American Loan & Trust Company against the Oregon Short Line Railroad Company for the purpose of foreclosing the consolidated mortgage of the Oregon Short Line & Utah Northern Railway Company, as hereinafter recited.

Another suit of Ham vs. O. S. L. & Utah Northern, et al.

"(d) On September 4, 1894, James M. Ham, as Trustee, and complainant, brought his bill in the Third Judicial District Court of Utah territory, against the Oregon Short Line & Utah Northern Railway Company, the Union Pacific Railway Company, the American Loan & Trust Company, and the receivers above mentioned. This bill was brought for the purpose of foreclosing a certain mortgage known as the Utah Southern Railroad (Company's) Extension mortgage, dated July 1st, 1879, to William H. Hooper and James M. Ham, as Trustees. On September 4, 1894, the said Court appointed the same five persons as receivers of the mortgaged property described in the said bill of complaint and mortgage; which property is generally (4774) described as the railroad line of the said company extending from Juab, in the County of Juab, in a southerly direction through Juab, Millard and Beaver Counties, to Frisco, in the County of Beaver, in the Territory of Utah, a distance of 130 miles; and the said Receivers in said cause operated the railroad properties mentioned and described in the said complainant's bill as receivers therein until about March 15, 1897, when in pursuance of the orders of the Court in that behalf duly made, they surrendered the possession of the same to the purchasers thereof under a sale of said prop-

erty under decree in the above entitled cause, and to the purchasers under a decree entered in the case of the American Loan & Trust Company against the Oregon Short Line Railroad Company for the purpose of foreclosing the consolidated mortgage of the Oregon Short Line & Utah Northern Railway Company, as hereinafter recited.

American Loan & Trust Co. vs. O. S. L. & Utah Northern.

"(e) On December 24, 1894, the American Loan & Trust Company, Trustee, and as complainant, brought its certain bill in the Circuit Court of the United States for the District of Oregon, and in the Districts of Idaho and Montana, and the Third Judicial District of Utah, against the Oregon Short Line & Utah Northern Railway Company, which bill was brought for the purpose of foreclosing a certain mortgage made by the Oregon Short Line & Utah Northern Railway Company, under date of August 1st, 1889, and known as the consolidated mortgage of said company, to secure an issue of mortgage bonds therein described; that no receivers were appointed in said suit of the American Loan & Trust Company, but that upon final hearing of said cause, upon answers of the parties and proofs taken, a final decree of foreclosure and sale of the property mentioned in said bill was entered, directing the sale of said property under the terms and conditions in said decree recited, but the said property was to be sold subject to the prior lien upon the same as found and determined by said decree. In said proceeding, the decree was duly executed and the property sold pursuant to the terms thereof to Samuel Carr, et al., as purchasing committee to purchase the property for and on behalf of the Oregon Short Line Railroad Company, and said purchasers thereupon and thereafter filed in the said Courts in which the hereinbefore mentioned foreclosure suits were pending, and also in the Circuit Courts of the United States, wherein the said Ames suit above mentioned was pending, their petition requiring the receivers in said several causes to surrender and deliver the possession of the properties named in the said several suits, and also embraced in the decree in this cause, to said purchasers of said property. The Special Master who made the sale in said Oregon suit, made report of sale and the same were duly confirmed, and a deed was made, executed and delivered by him to Oregon Short Line Railroad Company conveying to it all of the said properties, and upon the petition of said purchasing committee of the Oregon Short Line Railroad Company, decrees were entered and made in all of the other suits hereinbefore mentioned, directing the said Receivers to surrender and deliver the properties of the Oregon (4775) Short Line & Utah Northern Railway Company, so purchased by the Oregon Short Line Railroad Company, to said last named company, and the said deliveries were made in pursuance to said decree on or about the 15th day of March, 1897. The deed made by the said Special Master to Oregon Short Line Railroad Company was dated February 23, 1897, and embraced all of the properties described in the bill to foreclose in said case, which embraced all the railroads of the said Oregon Short Line & Utah

Property sold under decree to committee acting for Oregon Short Line Railroad Co.

Delivery of possession to purchasing company.

Northern Railway Company as described in said consolidated mortgage and in the said several underlying mortgages, and the same recited that—

Recitation in deed.

" 'Said properties are situate in the States of Oregon, Idaho, Montana, Wyoming, Nevada and Utah, and elsewhere. The intention of the said decrees and sale, however, and of this deed and transfer being to convey, and hereby conveying all of the said railway properties, and other property, of the Oregon Short Line & Utah Northern Railway Company expressed to be conveyed by the said consolidated mortgage, wherever the same may be situated, free from any interest or claim therein or thereto whatsoever by the Oregon Short Line & Utah Northern Railway Company, and by any or all persons claiming by, through or under it.'

Organization of The Oregon Short Line Railroad Company.

"The Oregon Short Line Railroad Company was organized on the 1st day of February, 1897, under a statute of the State of Utah, approved January 22nd, 1897, for the purposes set forth in its Articles of Incorporation, a copy of which has been introduced in evidence and marked Complainant's Exhibit 206 (page 3433). It

Its powers.

was organized for the purpose of purchasing, owning, maintaining, operating and further extending the railroad, rights, property and franchises formerly owned by the Oregon Short Line & Utah Northern Railway Company, and to construct or acquire, by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines within or without this State (Utah), as the Directors of the Corporation may from time to time deem expedient, and as may be authorized by law.

Utah & Pacific.

"The Utah & Pacific Railroad Company was a corporation of the State of Utah, organized on August 20th, 1898, for the purpose of constructing, equipping, acquiring, owning, maintaining and operating, by steam, electric or other motive power, a railroad by the most feasible route from Milford, Beaver County, in the State of Utah, southwesterly through the counties of Beaver and Iron, to the western boundary line of the State of Utah, a distance of about seventy-five miles." A certified copy of the articles of incorporation of said Company, is marked Defendants' Exhibit 238 and set out on pages 4776 to 4781.

Agreement between McCune, et al, and O. S. L.

(4781) "On the 16th day of August, 1898, the gentlemen who were interested therein, namely, Mr. A. W. McCune, David Eccles, Charles W. Nibley and William L. Hodge, made a certain agreement with the Oregon Short Line Railroad Company, providing for the organization by said last named parties of the Utah &

Option to purchase property of Utah & Pacific.

Pacific Railroad Company. This contract is the same one offered in evidence by the Complainant, and is to be found at page 2436 of the printed record. It reserves to the Oregon Short Line the right to purchase all the stock, securities and properties of said Utah and Pacific Railroad Company, at prices and upon terms and conditions

Exercise of option.

in said contract specified. During the month of May, 1900, the Short Line Company took from the said Utah and Pacific Railroad Company, of its first mortgage bonds, the amount of $279,000. In

the early part of April—April 9th, 1901, the Short Line Company took over the capital stock of the Utah & Pacific Railroad Company, in the amount of $825,000, and during that month they also took over the remainder of the first mortgage bonds of said Utah & Pacific Company, and took possession of and operated the properties thereof thereafter.

Maps of Utah & Pacific.

"Pursuant to said contract, the said Utah & Pacific Company made and filed its maps of definite location, locating its line of railroad upon and coincident with the line of adopted road of the Oregon Short Line & Utah Northern Railway Company, extending from Milford to Uvada. The Oregon Short Line Railroad Company became the successor by purchase at foreclosure sale, of the physical properties of the original consolidated company, the Oregon Short Line & Utah Northern Railway Company, as heretofore shown by copy of extract from the deed. It took also from the said Oregon Short Line Railroad Company and from the Oregon Short Line & Utah Northern Railway Company, the assignment of the rights of said companies in and to the graded roadbed formerly of the Oregon Short Line & Utah Northern Railway Company, and to the rights of said company and its successor, the Oregon Short Line Railroad Company, to its right of way secured under the profile maps made and filed in the Department of the Interior by said Company in the year 1890, and caused the same to be filed in the office of the Secretary of the Interior. This right of way was coincident in (4782) length with the graded roadbed extending from Milford to the Utah-Nevada state line.

Properties of "The Oregon Short Line Railroad Company."

Utah & California.

"About the year 1896 the Utah & California Railroad Company, a corporation of the State of Utah having power to build a railroad within said State only, also adopted a line of railroad, and filed the maps thereof, which line of adopted road and maps was coincident with the original right of way of the Oregon Short Line & Utah Northern Railway Company as defined in its maps filed in the Department of the Interior in 1890. The maps so filed by the Utah & California Company were never approved, but the Utah & California Company made an assignment of all its rights obtained by virtue of its said adoption of line and filing of maps, to the Utah & Pacific Railroad Company, after which the Department of the Interior approved the maps filed on behalf of said Utah & Pacific Company, and it became, therefore, vested with the rights thereto under the law of March 3rd, 1875, from Milford to the Nevada State line." A copy of said assignment is marked Defendants' Exhibit 239 and is set out on pages 4782 to 4787.

Assignment to Utah & Pacific.

Utah, Nevada & California, a a subsidiary company of O. S. L.

(4787) "The Utah, Nevada & California Railroad Company was a corporation of the State of Nevada, organized on the 2nd day of February, 1899. It was, in fact, a subsidiary company of the Oregon Short Line Railroad Company. Its Articles of Association were duly certified by the Secretary of State of the State of Nevada, and a list of its officers filed in said office and in Lincoln County, and said articles with all of the proof required by the

regulations of the Department of the Interior of the United States were filed in the proper land offices of the United States for the purpose of acquiring a right of way for its railroad in pursuance to the terms of the Act of March 3rd, 1875. These articles authorized said company to construct, own, maintain and operate a railroad from a point described in said articles, across the State of Nevada for a distance of about 215 miles, with a branch line extending from Caliente to Pioche, making a total distance of about 245 miles." These Articles of Incorporation are marked Defendants' Exhibit 240 and are set out on pages 4788 to 4790.

Adoption of survey between Uvada and Caliente.

(4790) "The Board of Directors of the Utah, Nevada & California Railroad Company, on February 23rd, 1899, had submitted to it a map of the survey of railway line from a point on the east boundary line of the State of Nevada, to a point in section 8, township 4 south, range 67 east, Mt. Diablo Meridian, in said State of Nevada, a total distance of 40 miles (being the survey of the line from Uvada to Caliente), and the said Board thereupon passed a resolution adopting the line of route for its railroad as surveyed and represented upon the maps returned and sworn to by T. M. Baird, a civil engineer, and extending from a point on the east boundary line of the State of Nevada, as described upon said map, to a point in section 8, township 4 south, range 67 east, Mt. Diablo Meridian, in said state, a distance of forty miles, and the same was then adopted as the definite location of the road between said points.

Maps returned for correction.

The maps so filed (4791) were returned by the Department to the Local Land Office for correction September 16, 1899, and on December 25, 1899, were forwarded by Register and Receiver of Local Land Office to Utah, Nevada & California Company.

Corrections made and maps refiled.

March 1, 1901, the corrections were made and the maps refiled in the proper land office in the State of Nevada.

"By reason of apparent conflict between the said maps so corrected and the original maps of the Oregon Short Line & Utah Northern Railway Company, with certain maps on file in said land office by the Utah & California Company, a contest arose in said office which was set for hearing on the 11th day of March, 1901.

Contest.

At a meeting of the Board of Directors of the Utah, Nevada & California Railroad Company held on April 29th, 1901, the said Board had submitted to it maps and profiles showing the line of its road beginning at the said point in section 8, township 4 south, range 67 east Mt. Diablo Meridian (namely Caliente), for the length of 20 miles extending in the direction of Pioche, and shown by Map No. 12, and on the same day Map No. 13 was submitted, showing the continuance of said line from the end thereof for a distance of 10.514 miles toward Pioche, which maps and profiles were approved and the line of route indicated thereon adopted as the line of route of the Railroad of said company.

Utah line towards Pioche approved.

Maps covering line beyond Caliente.

"On the same day, Map No. 3, covering a distance of 6.52 miles through the surveyed lands of the United States, southwesterly from Caliente, and also showing a further distance in the same

direction of 13.48 miles across the unsurveyed lands in Nevada, being a total of 20 miles upon said map, and the line of road thereupon delineated was, by the Board, adopted as the line of route of the railroad of said railroad company, and on the same day there was submitted to the Board Maps Nos. 4, 5, 6, 7, 8, 9, 10 and 11, each in sections of 20 miles, showing the line of location of the railroad southwesterly across the State of Nevada, separately showing where the same crossed surveyed and unsurveyed lands.

"And upon considering the same, it was resolved by the Board that the lines of route indicated upon said maps Nos. 4, 5, 6, 7, 8, 9, 10 and 11 were adopted as the line of railroad of said company. All of these maps were immediately filed in the proper land offices of the United States, and forwarded in due course to the Department of the Interior. On the 22nd day of April, 1901, the Oregon Short Line & Utah Northern Railway Company made an assignment of all its right, title and interest in and to the right of way for a railroad shown by its map of definite location on file in the United States land offices, extending from a point on the boundary line between the States of Utah and Nevada at Uvada, and extending thence in a southwesterly direction to a point known as Clover Valley Junction and beyond, with a branch line extending from said Clover Valley Junction (now known as Caliente) to the Town of Pioche, in Lincoln County, Nevada, and also assigned all of its right, title and interest in and to a grade for a railroad line, including tunnels, (4792) cuts and embankments from said Uvada between the States of Utah and Nevada to Clover Valley Junction, now known as Caliente, and thence to Pioche, which said assignment was made to the Utah, Nevada & California Railroad Company. The Oregon Short Line Railroad Company, as the purchaser under foreclosure of the physical properties of the Oregon Short Line & Utah Northern Railway Company, assigned all of its right, title and interest to the Utah, Nevada & California Railroad Company, to the railroad properties covered by the previous assignment, copies of these two documents being filed first in the office of the Secretary of the Interior.

Assignment by O. S. L. & Utah Northern to Utah, Nevada & California.

"The Utah & California Railroad Company above referred to, was a corporation organized in the State of Utah for the purpose of building a railroad in said State. It had, amongst other things, power to build from Milford to the Nevada State line, but it had no power by its original articles of incorporation, to build any railroad outside of the State of Utah. It did, however, file maps and profiles and adopt a line of railroad for its own purposes, coincident with the line of railroad and maps and profiles formerly filed by the Oregon Short Line & Utah Northern Railway Company, extending from Milford to Clover Valley Junction (Caliente), and thence to Pioche. It took no corporate steps to amend its articles of association giving it power to do any act in the State of Nevada until the month of December, 1900, or January, 1901, when it made an amendment of its charter. It did not file its charter, or in any

Powers of Utah, Nevada & California.

manner whatever comply with, or seek to comply with, the laws of the State of Nevada at any time earlier than the 9th day of April, 1901, and its maps and profiles and filings were in this condition at the time of the hearing in the Land Office at Carson City on March 11th, 1901.

Decision of local land office and of Sec'y. of Interior.

"The decision of the local Land Office was made soon after that date, and was immediately appealed from to the Secretary of the Interior, and the decisions of the local Land Office and of the Secretary of the Interior, are all stated in this record at pages 3267 and following, being copied into the statement of facts in the case of Utah, Nevada & California Railroad Company versus Utah & California Railway Company, and others. The contest in the Land Office was as to which set of maps should be approved, and briefly stated, the Land Office refused to give force to the old maps of the Oregon Short Line & Utah Northern Railway Company, rejected the maps of the Utah, Nevada & California Railroad Company, and approved the maps of the Utah & California Railroad Company. The Secretary of the Interior upon hearing, reversed this decision in whole or in part. It may be repetition of what has been said already, but at the time of this controversy in the Land Office, there was an operated railroad between Milford and Uvada, and it was operated by the Utah & Pacific Railroad Company, and it was in reference to this operated railroad that in April, 1901, the Oregon Short Line (4793) Railroad Company exercised its option of purchase. It was the graded work south of this operated railroad, namely from Uvada south to Caliente that was the subject matter of the controversy in the Land Office, and in the Interior Department.

San Pedro promoters gain control of Utah & California.

"The persons interested in the organization of what was afterwards the San Pedro, Los Angeles & Salt Lake Railroad Company in December, 1900, or early in 1901, made some sort of an arrangement with the Utah & California Railroad Company by which they controlled the same, and in its name sought to obtain rights which should afterwards be conveyed to the San Pedro, Los Angeles & Salt Lake Railroad Company. On April 19th, 1901, the Utah and

Assignment to San Pedro.

California Railway Company assigned, transferred, conveyed and quit-claimed to the San Pedro, Los Angeles & Salt Lake Railroad Company all of its rights, title and interest in and to the property it then had or might thereafter acquire by reason of the approval of its map by the Honorable Secretary of the Interior in and to the right of way and railroad grade in the State of Nevada, extending from a point on the state line between Utah and Nevada near Uvada station on the Utah and Pacific Railroad, in a southwesterly direction a distance of about forty miles, and thence in a northwesterly direction a distance of about thirty-five miles, to a point near Pioche, which right of way was particularly described and defined by the maps and surveys thereof filed in the United States Land Office at Carson City, Nevada, on April 27th, 1897. This action was taken in pursuance to a vote of the Board of Directors of the

Utah and California Railway Company, at a meeting of said Board held on April 19th, 1901.

Los Angeles Terminal.

"The Los Angeles Terminal Railway Company was a corporation existing under the laws of California, and owned a line of railroad extending from San Pedro to Los Angeles, with branch lines extending to Pasadena and Verdugo Canyon, in all about 45 miles of railroad. This property, during the year 1900, was acquired by Mr. W. A. Clark, David Keith, Thomas Kearns, and R. C. Kerens and his associates. During that year, or early in 1901, these gentlemen determined to construct or acquire a railroad connecting with the Los Angeles Terminal Railway, extending eastwardly through California, Nevada and Utah to Salt Lake City, Utah. On March 20th, 1901, the San Pedro, Los Angeles & Salt Lake Railroad Company was organized as a corporation of the State of Utah, and its articles of incorporation were filed in the office of the County Clerk of Salt Lake County, Utah, on March 21st, and in the office of the Secretary of State of the State of Utah on March 28th, 1901. The same articles were filed in the office of the Recorder of Deeds of Lincoln County, Nevada, on the 8th day of April, 1901, and the same together with certificates and the due proofs required by the regulations of the Department of the Interior, were filed in the office of the Secretary of the Interior on May 2nd, 1901, except that a certified copy of the laws of the State of Nevada with (4794) respect to the operation of railroads in said state, was not filed in said Department of the Interior until May 27th, 1901, and under date of June 4th, 1901, the Commissioner of the General Land Office advised that the papers relating to the incorporation of the San Pedro, Los Angeles & Salt Lake Railroad Company had been found to be prepared in due form and had on that day been submitted to the Secretary of the Interior to be accepted for filing under the provisions of the Act of March 3, 1875.

Conclusion to build to Salt Lake.

Organization of San Pedro.

Approval of San Pedro filings by Com's'r. Gen. Land Office.

"The organization of the San Pedro, Los Angeles & Salt Lake Railroad Company, by the election of its officers, was completed on the 21st day of March, 1901, at Salt Lake City, Utah. On May 22nd, 1901, the Board of Directors of said company, at a meeting held on that day, amongst other things, took the following action: 'The presiding Vice-President then announced that the next business in order was the consideration of certain maps of surveys made pursuant to a resolution of the Board of Directors adopted at its meeting on March 21, 1901, by First Assistant Engineer McCartney. First Assistant Engineer McCartney thereupon exhibited to the Board seven maps in duplicate, numbered one to seven inclusive, showing the surveyed and located line for a railroad as follows: Map No. 1—From the Utah Nevada line southwesterly to Clover Junction, 40 miles, located March 26 to April 2, 1901. Map No. 2—From Clover Junction northwesterly to vicinity of Panaca, 20 miles; located April 2-7, 1901. Map No. 3—From end of Map No. 2 northwesterly to head of Condor Canon, 1.913 miles; located April 7, 1901. Map No. 4—From Clover Junction southwesterly

down Meadow Valley, 20 miles; located April 8-16, 1901. Map No. 5—From end of Map No. 4 down Meadow Valley, 20 miles; located April 18-25, 1901. Map No. 6—From a point one mile southwest of Clover Junction and northwesterly to Pioche, 32 miles; located April 27 to May 6, 1901. Map No. 7—From end of Map No. 5 down Meadow Valley, 20 miles; located May 10 to 16, 1901.

Adoption of maps.

"'On motion of Mr. McCornick, seconded by Mr. Kearns, all of said maps were adopted and approved as showing the survey and location of a part of the line of railroad which it is proposed and provided for in the articles of incorporation shall be constructed through Lincoln County, Nevada, and said First Assistant Engineer was authorized and directed to cause said maps to be filed without delay in the United States Land Office at Carson City, Nevada, to be forwarded to the Honorable Secretary of the Interior at Washington, D. C., for approval by said Secretary.' That at the meeting of the Board of Directors, held on the 21st day of March, 1901, the following action was taken: 'Resolved, that the Chief Engineer of this corporation is hereby authorized, empowered and directed to enter upon and prosecute and complete with all practicable and convenient dispatch the survey and (4795) location of the main line of railroad proposed to be constructed by this corporation from the City of Salt Lake, in the County of Salt Lake, and State of Utah, to the City of Los Angeles, County of Los Angeles, and State of California, as the same is provided for in the articles of incorporation of this company; and, Resolved, that H. M. McCartney, First Assistant Engineer of this corporation, is hereby employed, appointed, authorized and instructed to at once enter upon, prosecute and complete the survey and location of that part of said main line of railroad, which it is proposed and provided for in the articles of incorporation shall be constructed through Lincoln County, Nevada.'

Construction of San Pedro authorized by its Board.

Identity of lines included in maps.

"The Lines of railroad referred to in maps Nos. 1, 2, 3 and 6, embraced what is heretofore mentioned in the maps of the Oregon Short Line & Utah Northern Railway Company, and the Utah, Nevada & California Railroad Company, as the line from Milford to Pioche. The other maps relate to the territory extending southwesterly from Caliente.

"TAX TITLES.

Right of way of O. S. L. sold for taxes.

"Certain taxes were levied in Lincoln County, Nevada, for the year 1893, against the Oregon Short Line & Utah Northern Railway Company, as to its possessory claim for a right of way and partially completed roadbed thereon situated, from Uvada to Pioche, and in course of time, claiming under authority of the revenue laws of the State of Nevada, said right of way was exposed for sale under a judgment and decree of the District Court of Lincoln County, Nevada, rendered in the year 1894, for delinquent taxes claimed to be due upon the assess-

ment of 1893, and sold to the County of Lincoln, but no certificate of sale was ever written out or made of said sale until about the month of February, 1901. That in February, 1901, a certain certificate of sale was prepared, signed by E. D. Turner, who, at the date of said sale, was the Sheriff of Lincoln County, Nevada, but who was not at the making and execution of said certificate the Sheriff of Lincoln County, Nevada, that office at that time being held by one Johnson; that on February 23rd, 1901, a deed purporting to be issued in said proceeding by E. D. Turner, as Sheriff of Lincoln County, Nevada, and purporting to convey said property to one W. J. Dooley, Treasurer of Lincoln County, Nevada, which deed bore date the 1st day of December, 1894, and was signed by E. D. Turner, as Sheriff of Lincoln County, Nevada, and the same was acknowledged by him on the 23rd day of February, 1901, under a Notary's certificate that he was the same person who was Sheriff of said County at the date of said deed; said deed, when so executed, was placed upon record in said Lincoln County, Nevada, and it embraced 'the possessory claim to surveyed right of way for railroad of sixty-five miles of railroad more or less, running from the state line on the east, southwest down Clover Valley Wash, thence north up Meadow Valley Wash to within three miles of Pioche, with sixty miles more or less of prepared road bed, consisting of cuts, fills, tunnels, etc., and known as (4796) the Milford and Pioche line of the Oregon Short Line and Utah Northern Railway, situated in Lincoln County, Nevada.'

No certificate of sale made.

Tax deed made by successor sheriff—7 years after sale.

"Thereafter, by an arrangement between the San Pedro, Los Angeles & Salt Lake Railroad Company and the County of Lincoln, the said County of Lincoln granted and quit-claimed to said San Pedro, Los Angeles & Salt Lake Railroad Company, all of the right, title and interest of said County in and to 'The railroad right of way extending from a point about three miles north of Pioche to Clover Valley Junction, built and formerly owned by the Oregon Short Line and Utah Northern Railroad Company, and sold for taxes and purchased and now owned by said County of Lincoln.' On March 4th, 1901, the Utah & California Railway Company made an arrangement with the County of Lincoln, Nevada, whereupon the following resolution was passed by the Board of County Commissioners of said County: 'Resolved, that if the said Utah & California Railway Company, or its assigns, shall within six months from this date, build and place in operation a broad gauge railroad from Uvada, Utah, to the Culverwell Ranch in Lincoln County, Nevada, and pay the County of Lincoln the sum of $5,083.00, then and in that event the County of Lincoln will convey and confirm unto said Utah & California Railway Company, or its assigns, all of the right, title and interest of said Lincoln County, in, to and concerning said Oregon Short Line and Utah Northern Railway Company's grade within the County of Lincoln.'

Quit claim from County to San Pedro.

Agreement between Utah & California, and Lincoln County, Nev.

Agreement between San Pedro and Lincoln County, Nev.

"Thereafter, on May 6th, 1901, an agreement was made between Lincoln County, Nevada, and the San Pedro, Los Angeles & Salt Lake Railroad Company, as follows: 'It is mutually agreed between the undersigned that the Check No. 183, for the sum of three thousand and eighty-three and 02-100 dollars ($3,083.02) drawn by the San Pedro, Los Angeles & Salt Lake Railroad Company, to James A. Nesbitt, Treasurer of Lincoln County, and hereto attached, shall be held by said Treasurer until the determination of the suit pending in the District Court of the Fourth Judicial District of Nevada, wherein the Utah, Nevada and California Railway Company is plaintiff; and John Simpson, et al, Commissioners, are defendants, and in the event of the County's title to the old O. S. L. & U. N. Ry. Co. grade and right of way in Lincoln County being adjudged valid, but that the sale thereof must be made at public auction, the said check and the amount mentioned therein shall be taken as a part of the sum of $5,083.02, to be bid by said S. P. L. A. & S. L. R. R. Co. for said right of way and grade, at the time the same shall be advertised for sale by said County. The said $2,000.00 already paid to said County for a portion of said right of way, shall constitute the balance of the amount to be bid by said S. P. L. A. & S. L. R. R. Co., as aforesaid, provided that said last named company become the purchasers of said property, and in case the said title of said County be held invalid, or (4797) that the S. P. L. A. & S. L. R. R. Co. does not become purchaser of said grade, the said check shall be returned to said S. P. L. A. & S. L. R. R. Co.

" 'It is further agreed that in the event said title is held to be valid, and that the same may be disposed of at private sale, then the said check shall be taken as the balance of the purchase price for the right of way from Clover Valley Junction to Uvada, and a conveyance thereof shall be made to said S. P. L. A. & S. L. R. R. Co., provided it is determined by the Board of County Commissioners to sell said property at private sale.'

Utah, Nevada & California vs. Utah & California, et al.

"On or about the 27th day of April, 1901, the Utah, Nevada and California Railroad Company brought its Bill in the Circuit Court of the United States for the District of Nevada against the Utah and California Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, and others, as defendants,

Allegations of Bill.

in which said Utah, Nevada & California Railroad Company set up its title to the railroad, right of way, roadbed, grade and improvements on said right of way as shown upon said maps and profiles approved by the Department of the Interior of the United States in favor of the Oregon Short Line and Utah Northern Railway Company, as to the line of railroad extending from Uvada in a southwesterly direction across the State of Nevada to the southwestern boundary thereof, and also as to the branch line of railroad right of way extending from a point on said line above described, known as Clover Valley Junction, and about 40 miles southwest from Uvada, and extending thence in a northerly direction to

the town of Pioche a distance of about thirty miles; it alleged the organization of the Nevada Pacific Railway Company and the Oregon Short Line & Utah Northern Railway Company, the resolve of the last named company to construct a railroad upon the line above described; the making, filing and approval of the maps in respect of the proposed line of railroad; the construction of a partially completed roadbed upon said right of way from Uvada to Caliente and towards Pioche; the filing of all the maps covering this entire line of right of way; the suspension of work thereon, by reason of financial embarrassment of the said Oregon Short Line and Utah Northern Railway Company, the receivership of said company as hereinbefore referred to; the foreclosure of the several mortgages; the sale of the property to the Oregon Short Line Railroad Company, and the possession thereof by said last named company about March, 1897.

"It futher alleged the organization of the Utah, Nevada and California Railroad Company as an auxiliary company to the Oregon Short Line Railroad Company; the making and filing by said company of its various maps in the United States Land Office; the organization of the Utah & California Railway Company, and the nature of its corporate powers, rights and privileges; the organization of the San Pedro, Los Angeles & Salt Lake Railroad Company, its entry upon and possession of said right of way, and the interference with said possession by the Utah & California Railway Company (4798) and the San Pedro, Los Angeles & Salt Lake Railroad Company; that it claimed its right to said right of way, roadbed and grade by virtue of assignments of the rights of the Oregon Short Line Railroad Company and of the Oregon Short Line and Utah Northern Railway Company, as well as by the maps, profiles, and proceedings which it had taken in the Department of the Interior to secure an approval of its said maps; the interference with said property and the attempted seizure thereof by the Utah and California Railway Company and the San Pedro, Los Angeles & Salt Lake Railroad Company. It prayed for appropriate relief, and for an injunction restraining the said defendants, their agents and servants from in any way hindering, delaying or impeding the complainant in the construction of its railroad upon said right of way, and for the quieting of title thereto in said complainant, and restraining the defendants from making or asserting any right, title or claim in or to said right of way, or any part thereof, and for other appropriate relief in that behalf. To this bill the several defendants filed their answers.

Amended Bill.

"Later, and on or about the 25th day of May, 1901, the Utah, Nevada and California Railroad Company filed its amended and supplemental bill, and alleged that since the filing of its original bill it had filed maps and profiles of its branch line of railroad extending from Clover Valley Junction to or near the town of Pioche in the State of Nevada, and that the same had been submitted to the Department of the Interior; that it had caused sur-

veys to be made of its said line of railroad, and caused maps and profiles to be prepared showing the line of right of way for its railroad from Clover Valley Junction southwesterly across the State of Nevada and through the County of Lincoln, Nevada, to the Western boundary thereof, and that it had caused to be filed maps and profiles in the Department of the Interior for approval; that it had duly adopted the line of right of way described and embraced in said maps and profiles, and that it owned the same; that it was prosecuting the work of constructing said line of railroad, and then had in operation 23 miles of railroad upon its main line from Uvada towards Clover Valley Junction, and had material for a large amount of further construction; that the defendants were interfering with its possession of said right of way southwesterly from Caliente; that it had notified the said defendants and their agents to desist from certain specified encroachments upon said right of way, and alleged the entry by said defendants upon various parts of said right of way for the purpose of dispossessing the complainant thereof.

"It also set up and alleged the taking of a certain deed by the San Pedro, Los Angeles & Salt Lake Railroad Company from one James A. Nesbitt, as above recited, the existence of a certain agreement between the San Pedro, Los Angeles & Salt Lake Railroad Company and the County of Lincoln in respect to certain tax title rights and interests; alleged the invalidity of said deed and the proceedings on the part of the County Commissioners of Lincoln (4799) County, and that said deed and proceeding were void for the reasons in said bill stated, it described that certain judgment entered in the District Court of Lincoln County, against the Oregon Short Line & Utah Northern Railway Company in respect to the taxes levied in 1893, and alleged the invalidity of said judgment, and that the same was void for the reasons therein stated. It prayed for an injunction restraining the defendants and each of them from any interference with said right of way and property described in said amended and supplemental bill, and that the said tax proceedings, tax deed and agreement with Lincoln County be declared void and of no effect, and for other and further relief.

Answer and Cross-Bill of San Pedro.

"The San Pedro, Los Angeles & Salt Lake Railroad Company filed its answer and cross-bill to said original and amended and supplemental bill, in which it set up the facts in relation to its claim to the right, title and possession of said properties. The other defendants also filed answers to said amended and supplemental bill, replications were made, and issues joined, and the same resulted in a hearing in said Circuit Court of the United States for the District of Nevada, on or about the 20th day of June, 1901, before the Honorable Thomas P. Hawley, Judge of said court, and in an order and decree made by said Judge on the 22nd day of July, 1901, copy of which may be found on page 3232 of record (see also page 3230).

Hearing.

Decree.

"That on or about the day of , 1901, the Utah, Nevada and California Railroad Company brought its certain suit in the Fourth Judicial District Court of the State of Nevada against John Simpson, E. D. Turner and Henry Matthews, County Commissioners of Lincoln County, Nevada, James W. Nesbitt, Treasurer of Lincoln County, and the State of Nevada as defendants, in which it alleged the facts relating to the assessment of taxes by Lincoln County, on the right of way of the Oregon Short Line & Utah Northern Railway Company for the year 1893; the commencement of suit by Lincoln County to recover the amount of said taxes under the revenue laws of the State of Nevada; the rendition of a pretended judgment in said proceeding, the issuance of an execution and an order of sale, the sale of the property, and a deed of conveyance thereof under said pretended proceedings, to one James W. Nesbitt, the Treasurer of Lincoln County, and alleged that all of said proceedings and judgment were void and of no effect and prayed for a cancelation of said deed, judgment, execution and sale in pretended pursuance thereof.

Utah, Nevada & California vs. County Com'rs. of Lincoln Co.

"On June 9th, 1903, upon a hearing of said cause, the Court found that the facts set forth in said petition were true; that said judgment was entered without authority of law and not in accordance with the provisions of the laws of Nevada, and it decreed that the summons, publication thereof, and judgment were contrary to law, and that no jurisdiction of the Oregon Short Line and Utah Northern Railway Company or its property was acquired thereby, and that the same and each of them were null and void; that the execution issued (4800) in said cause, and the pretended sale thereunder, and the certificate of the Sheriff based thereon, and the deed made in pursuance thereof, were illegal, null and void, and the Court held and adjudged that the plaintiff was the legal owner and holder, and in possession of all of said property described in said complaint, consisting of said railroad, right of way, roadbed and other structures and appurtenances thereto belonging, and its title thereto was thereby quieted and confirmed. The allegation in said cause in respect to said tax proceedings and sale were substantially the same as the allegations set forth in complainant's amended and supplemental bill filed in the Circuit Court of the United States. The pleadings in said case are all in evidence, and appear on pages 3238 and following, of the printed record. Various suits were instituted by the respective companies and their officers against each other in the District Court of Lincoln County for condemnation of right of way, for forcible entry and detention and other suits of like character.

Tax Proceedings declared void.

"The Circuit Court of the United States for the District of Nevada rendered its decree and judgment in the interlocutory proceedings of July 22nd, 1901, on the restraining order originally issued in said cause on April 27th, 1901, restraining the defendants from interfering with the so-called Uvada-Clover Valley Junction-Pioche Grade, until the further order of the court. The motion for

San Pedro enjoined from interfering with grade.

an additional injunction under the amended and supplemental bill filed on June 3rd, 1901, was heard at the same time, and in that cause the court held that the complainant had made out a prima facie case to entitle it to an injunction pendente lite as to that part of the right of way covered by the roadbed from Uvada to Clover Valley Junction, and from thence to Pioche, but that the complainant had not made out such a case as to entitle it to the additional injunction prayed for in the supplemental bill. It expressly declined to consider the question arising under the supplemental bill as to the right of way, maps and surveys thereof, because these questions were still pending in the Land Department of the United States, having jurisdiction of the matter, and because as to the tax title the complainant had already brought suit in the State Court to determine these questions, where it was pending at the time of the filing of the supplemental bill. The opinion of the court is found in 110 Federal Reporter, at page 879.

No decision as to right of way beyond Caliente.

"In the month of September, 1901, certain motions, demurrers and other pleadings were being considered by the Judge of the Fourth Judicial District Court of the State of Nevada, upon a hearing of the matters then before him. At that time, certain negotiations were instituted between counsel for the respective parties with respect to the disposition of all litigation then pending between the companies, and for a settlement of the right to occupy the disputed territory through the Meadow Valley Wash, which resulted in a memorandum (4801) between them, to be submitted to their respective corporations for consideration; said memorandum being as follows: 'Points for consideration in proposed settlement of pending controversies between the Utah, Nevada & California Railroad Company and the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter respectively called the Nevada Company and the San Pedro Company.

Negotiations for settlement.

Points for consideration in proposed settlement.

I.

LINE FROM UVADA TO CALIENTE.

"Location and title of Nevada Company to stand confirmed. San Pedro Company to withdraw all contests in courts and land department, and, if requested, to convey to the Nevada Company any interest of the San Pedro Company therein derived from the Utah & California Railway Company, Lincoln County, Nevada, or from private parties.

II.

LINE FROM CALIENTE TOWARDS PIOCHE, KNOWN AS PIOCHE BRANCH.

"Location and title of Nevada Company to stand approved, San Pedro Company to withdraw all contests in all courts and land department, and to convey to the Nevada Company all rights of way secured by it from private parties, upon being paid the cost thereof, and to convey to the Nevada Company all interest derived by it

through the Utah & California Company and Lincoln County, Nevada, without compensation.

"The San Pedro Company, along said line in all places where canyons or defiles are too narrow for two complete 200 foot parallel rights of way, to have room upon the Nevada Company's right of way to construct and maintain its road, to this end dividing the practicable ground in narrow places between the companies substantially equal. San Pedro Company to compensate the Nevada Company for so much, if any, of the constructed grade of the Nevada Company as it may use along said line, and to be paid the cost of right of way along said line which it has derived by purchase from owners of land along the same, and which the Nevada Company may use, the San Pedro Company, however, not to be required to pay anything for land acquired through the said canyons under the grant from the United States.

III.

LINE FROM CALIENTE SOUTHWESTERLY TO NEVADA-CALIFORNIA STATE LINE.

"(a) For about four miles southerly from Caliente, to a point where the San Pedro Company's relocated line approaches the map (4802) line of the Nevada Company, the Nevada Company's mapped line to stand approved, it paying the San Pedro Company the value of any grading or work done upon said line by it prior to this time, and the cost of any right of way which it may have secured from private parties over said distance and which work of right of way may be used by the Nevada Company; the San Pedro Company's relocated line for said distance to be approved.

"(b) From the point named in paragraph 'a' hereof, southerly through Meadow Valley Wash and through California Wash, and to a point about 115 miles southerly from Calientes, and through places too narrow for two complete rights of way 200 feet in width, to be secured without unreasonable expense, each company to take enough ground to construct and make its line, to this end dividing the practicable ground through said narrow places between the companies upon substantially equal basis, each company wherever practicable to secure its right of way for the full width and occupy the same, so that said rights of way will not, except in said narrow places, conflict with each other and to be so located as hereafter provided as to prevent the crossing of one road by the other.

"(c) Beyond the southerly end of the California Wash and near 115 miles from Calientes, the mapped line of the Nevada Company to stand approved.

"(d) Upon the line described in paragraph 'b' of this clause, the companies to at once relocate their respective adopted lines by joint action of their respective engineers, so as to secure improved lines in compliance with the general provisions of paragraph 'b,' and for said line described in paragraph 'b' in case either company uses any constructed grade work heretofore done by the other it

shall make compensation therefor upon the basis of value of the work taken and used. If either company shall use any right of way heretofore purchased by the other company, compensation shall be made upon the basis of cost thereof in proportion to the amount used.

IV.

"All suits in courts and contests in the United States Land Department to be disposed of or dismissed, in order to carry out the foregoing.

V.

"The San Pedro Company is to withdraw its intervention in the State Court Tax Title case and to aid the Nevada Company in securing the best possible adjustment of said matter with said Lincoln County and the State.

VI.

"Hearing of the action between the parties hereto in the Circuit Court of the United States for the District of Nevada, set for (4803) September 19th, to be adjourned for thirty days, subject to the convenience of the presiding Judge of said Court, pending which continuance neither activity nor inactivity in construction work, or work done or omitted to be done along said premises described in paragraph 'b' of Clause III hereof, shall be considered or given in evidence to the prejudice or advantage of either party hereto in any suit or proceeding now pending or hereafter to be brought.

"Testimony may be taken at Salt Lake City, Utah, before J. Tracey Smith, an Examiner appointed by said Circuit Court, and a copy thereof filed with the Register and Receiver of the Land Office at Carson City, with a stipulation providing that the same shall be received and accepted with the same force and effect as if given orally before said officers by the witnesses who gave said testimony before the said Examiner, and except as to the taking and filing of said testimony, the proceedings before said Register and Receiver set for the 16th day of September, 1901, shall also stand adjourned for thirty days, such adjournment to be provided for by a stipulation to be filed with said officers. (September 13, 1901.)

Foregoing memorandum tentative.

"The foregoing memorandum was one drawn up tentatively by counsel in the absence of principals, and without authority from them, but for consideration of the principals. Soon after arrangements were made for the making of the joint surveys mentioned in said agreement, and both roads put their forces of surveyors into the field for the purpose of seeing what could be done. Of course, both parties were fully advised that under the Law of 1875, in such a canyon as this, it would be possible for the line first obtaining the right of way to construct its road, and it would be required, on terms as prescribed by the Act of Congress, to admit other railroads to the use of the line. Neither party in this case desired to be the tenant line, on account of the many and

Joint survey.

well-known objections to such a situation, which any railroad man would at once recognize. It was the intention of Senator Clark and of his associates, to build their line through to Salt Lake City. This intention of theirs was declared openly, and they were recognized in other controversies in respect to the right of way, which, however, as to the available portion of the completed roadbed, had been decided against them by the Courts at the time this tentative agreement was made, and long before the joint surveys were made. The officers of both companies had become fully convinced that it was the intention of each of the others to build their respective roads through to their supposed destinations, but upon consideration of the nature of the country through which the road was to be built, its scarcity of population, being from the western part of Utah to the eastern part of California, practically across an uninhabited desert, with very great difficulties of construction, and for business reasons they determined that the best interest of both roads would be subserved by making the property a common property. (4804) After the completion of these joint surveys and their most unsatisfactory results, the parties considered the matter together, and negotiated for a number of months in respect to terms and conditions upon which an arrangement for its joint construction could be effected. The wisdom of their conclusion in respect to the impracticable nature of the Meadow Valley Wash has been more than justified by subsequent events. From 1890 to March, 1905, the grade from Uvada to Caliente had stood practically uninjured from floods or high waters. The Short Line, built into Caliente by July or August, 1901, and that part of the line stood without injury or damage until March, 1905. After the appropriation of that railroad grade which had been the subject of so much feeling and controversy to a useful purpose was accomplished, the forces of nature began their work, and the flood waters of March, 1905, washed out much of the grade, for about twelve miles east of Caliente, and a considerable distance west thereof, doing a large amount of damage.

Reasons for conclusion that the road should be common property.

Wisdom of the conclusion.

Flood of 1905.

"During the year 1905, the road was repaired and put in working order at an expense of several hundred thousand dollars. In February and March, 1906, another flood occurred, which dwarfed the damages done by the flood of the year 1905, and the Company repaired, or sought to repair, the damages caused thereby and to improve the road by raising the grade some five feet and putting in steel bridges and first class permanent work, which was done at a very great expense, approximating a million dollars. On January 1st, 1910, another flood came, very much greater in volume and force than any of the others, and while at this time we are unable to say just what damage has been done from the best information we have, we are advised that the railroad is swept entirely out of the canyon, and that it is impossible to repair or reconstruct it there, and it will be necessary to abandon that line of road and seek a new route across the country elsewhere. The total mileage of the

Flood of 1906.

Flood of 1910.

Mileage already constructed by O. S. L.

direct line from Salt Lake City towards California already constructed by the Oregon Short Line Railroad Company amounted to about 326 miles and a large amount of material had been purchased and was upon the ground for construction work down the Meadow Valley Wash.

Lines owned by San Pedro.

"The San Pedro, Los Angeles & Salt Lake Railroad Company at the time had only its lines in California, extending from San Pedro via Los Angeles to Pasadena, with a surveyed line for which the right of way had only in part been procured for a distance of about 60 miles, and upon which 60 miles only a small portion of grade and roadbed had been completed, and not to exceed ten or fifteen

Lines to be built.

miles of railroad track laid eastwardly from Los Angeles. There remained to be completed or provided for, the joint line to be constructed from Caliente to Los Angeles, a distance of about 450 miles; while if their purpose was carried out as originally intended, they would have had to construct an independent and practically as an (4805) adjoining line of road, a distance of about 890 miles. The

Time for completion of work.

time required for the completion of the line as a joint proposition was estimated to be about 18 months, whereas the time required to build their entire line from Salt Lake City to Los Angeles, would be in the neighborhood of three years. The Oregon Short Line Railroad Company's projected line could have been built and in operation in eighteen months or two years before the San Pedro Company's line could have been constructed as an independent line.

"Question 4. When was any agreement reached by the parties in respect to the matters in question, if any was reached, after the draft was made of the tentative proposals, and what were the

Negotiations for settlement.

surrounding circumstances in relation thereto? Answer: During the winter of 1901 and 1902, the business representatives of the respective parties held frequent conferences for the purpose of seeing what terms and arrangements could be agreed

Drafting of contract.

upon. After much negotiation by them, the attorneys were called in in the spring of 1902, and as representing the interests then called the Harriman interests, Judge W. D. Cornish and myself acted in drafting all papers and all contracts in behalf of said interests. Mr. Thomas E. Gibbon, General Counsel of the San Pedro Company, acted on behalf of that company, and perhaps three weeks to a month was spent in considering the terms and language of the contract. The lawyers' work was completed and terms agreed upon within a day or two of date of contract, which was finally signed by the parties, and bears date July 7th, 1902, and is one of the exhibits to the complainant's bill.

Preliminary contract of July 7, 1902.

"This contract of July 7th, 1902, was the preliminary contract looking to the final and complete settlement of the terms of purchase of various stocks and interests in companies held by Senator Clark and the San Pedro interests, and the price and terms upon which certain properties owned by the Short Line Company were to be conveyed to the San Pedro Company. As I remember it, there were 512 miles of tracks south of Salt Lake City conveyed and to be con-

veyed to the San Pedro Company, together with a large amount of material and equipment. After the contract of July, 1902, had been signed, active work in the way of making inventories and lists, and examination of property, were carried on by both sides, and the result of their final negotiation and their agreement in respect to the prices to be paid and delivery of properties from each side to the other, was consummated and arranged, and resulted in the contract of June 18th, 1903.

Contract of June 18, 1903.

"Question 5. You recall, of course, the traffic contract between the Southern Pacific Company and the San Pedro Company, which is an exhibit in the record in this case? Answer. I do. I assisted in drafting that contract, and it received very careful scanning and consideration.

Rates on local traffic.

(4806) "Question 6. I call your attention to the provision of that contract in respect to rates on local traffic. You are familiar with that provision? Answer: Yes, sir.

"Question 7. Will you please explain that provision as it was understood and intended by the parties, and the circumstances surrounding the same. Answer: The provision is that the San Pedro will 'in the first instance adopt the local rates and tariffs and charges issued by said Southern Pacific Company for the handling of local traffic by said San Pedro Company, which is or may be subject to competition between the Southern Pacific Company and the San Pedro Company.' The words 'local traffic' written in that contract were meant by the parties who drew it, to include only, or define concretely, the local tariffs of the Southern Pacific upon that portion of its line extending from San Pedro to Los Angeles, from Los Angeles to Pasadena, and Los Angeles to Riverside and San Bernardino. These were the only local lines of the Southern Pacific, which were in touch with any part of the San Pedro Company's lines as then existing, or as proposed to be constructed. It did not refer to through or transcontinental business, as an inspection of Section 1 of that article will clearly show. And again, the Southern Pacific had no local rates to any other points upon the San Pedro Company's line of railroad within the points limited by the description last above given, and could have none without constructing additional roads. The Southern Pacific had no local rate to Salt Lake City. The only rates of the Southern Pacific Company which were ever adopted by the San Pedro Company were local rates between Los Angeles, Riverside and San Bernardino; Los Angeles and Pasadena; Los Angeles and San Pedro. When the San Pedro road was opened to through business on the first of May, 1905, the first tariff which it put in effect between Los Angeles and Salt Lake did not adopt the rates charged by the Southern Pacific for that haul. The Southern Pacific had and has a rate between Salt Lake and Los Angeles, which rate is higher than the first tariff put in by the San Pedro Company. The San Pedro Company adopted and put in force the rate between Salt Lake City and San

Francisco, and that was a lower rate than any rate made from Salt Lake to Los Angeles.

"Question 8. What ultimately became of the provision that you have just been discussing? Answer. In the year 1907, the Legislature passed an Act known as the Cartwright Act," a copy of which was marked Defendants' Exhibit 241 and set out on pages 4807 to 4810. (4810) "This act was passed March 23rd, 1907, but did not go into effect for sixty days. Immediately upon receiving a copy of this act, I concluded that the contract with the Southern Pacific Company containing the provision above mentioned was unlawful, and would subject the San Pedro Company to the payment of penalties as provided for by that act. I immediately advised the officers of the San Pedro Company, and also the officers of the Southern Pacific Company of my opinion in respect to this matter. This resulted, on the 15th day of April, 1907, in the making of an agreement between the two companies absolutely canceling, abrogating and annulling the whole agreement so that no part thereof should be thereafter of any binding force or validity as between the party or parties, or otherwise. A copy of this Abrogation Agreement which I know to be a perfect copy, I now present. It is my best recollection that within a few days after its adoption, a copy thereof was sent to the State Railroad Commission of California and the Interstate Commerce Commission. The agreement was marked 'Defendants' Exhibit 242' " and (omitting signatures and attestation clause) is as follows:

Cartwright Act.

Cancellation of S. P. contract.

"This agreement, made and entered into this 15th day of April, 1907, by and between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, as party of the first part, and San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation duly organized and existing under the laws of the State of Utah, as party of the second part, Witnesseth, that: Whereas, under date of the 18th day of June, 1903, the parties hereto entered into an agreement consisting of Five (5) Articles; and, (4811) Whereas, it is mutually desired by the parties hereto that all of said agreement shall be abrogated and annulled, inasmuch as the validity of said agreement may be open to question under the recent act of the legislature of California, approved March 23rd, 1907, and being chapter 540 of the Statutes of 1907. Now, therefore, for good considerations to each by the other paid, the receipt whereof is hereby acknowledged, it is covenanted and agreed, by and between the parties hereto, that said agreement between the parties hereto, of date June 18th, 1903, and each and every part thereof be, and the same is, hereby canceled, abrogated and annulled, so that no part of the same shall hereafter be of any binding force or validity as between the parties hereto, or otherwise."

(4811) D. M. HANNAFORD

Hannaford.

Testimony given before Interstate Commerce Commission January 8, 1907, in the city of Chicago.

St. Paul. 2nd Vice Pres't N. P.

Lives at St. Paul; second vice-president of the N. P. (4812) His duties relate entirely to traffic and commercial interests. He has been connected with the N. P. 34 years. The N. P. has its western terminals at Portland, Seattle, Tacoma and all along up the Coast. The N. P. ran to Portland in connection with the Oregon Railway & Navigation Company at first in 1883. In the late 80's the N. P.'s own line was put through from Tacoma to Portland. The principal lines to reach Portland are the N. P., the O. R. & N. and the S. P. Witness attended the traffic meetings held by the transcontinental roads in the old days except during the Winter of 1886-1887. He often met Mr. Stubbs at those meetings. Mr. Stubbs represented the S. P. (4813) Mr. T. M. Kimball, Mr. Vining, Mr. Shelby, Mr. Munroe and whoever their traffic official in charge was at that time, represented the U. P. at those meetings.

Traffic meetings.

Divisions and pools.

Prior to 1887 there were discussions at those meetings as to divisions and pools of transcontinental business. The U. P. and S. P. figured as independent parties to those pools, and the N. P. also. There was at one time an arrangement for division of the traffic, that is, traffic for certain parts of the west being handled by the N. P., and traffic for certain parts farther south being handled by the other lines. In those negotiations the U. P. and the S. P. acted as separate roads. The different lines in those meetings including the U. P. and the S. P., were struggling to get as large a per cent. as possible of the common business. (4814) Prior to 1901 there was active competition throughout the Atlantic seaboard territory and the Chicago territory between the different transcontinental lines for the Pacific Coast business. "Q. All the roads were competing for that business? A. Well, all of the roads lying west of a line drawn north and south through Chicago." The S. P., the Santa Fe, the U. P., the N. P., the Burlington, and the D. & R. G. The G. N. and the C. P. were the principal lines prior to 1901. Of course, they had lines that led up to them. The S. P. has been one of the competitors of the N. P. at Portland on business originating on the Atlantic seaboard.

Roads competing for transcontinental business.

The route made up of the U. P. and O. S. L. and the O. R. & N. have been competitors likewise. (4815) The G. N. has also been for some time in connection with the U. P. via Spokane. The N. P. has participated quite largely in San Francisco passenger business and to a limited extent in freight. His line reaches San Francisco over the S. P. lines from Portland and over the Pacific Coast Steamship Company's boats from Puget Sound. In late years there has grown up quite a large traffic in cotton shipments from the southern states of the United States to the Orient. So far as witness knows all the lines are competing for that. Witness

Cotton traffic.

thinks that for Texas the S. P. takes that cotton by the Sunset route. He guesses they do from all the territories so far as he knows in the south. Considerable of that traffic comes to the witness—it comes up by Kansas City, the Burlington and some to St. Paul in connection with other lines. It comes from Louisiana. He supposes that cotton also moves west over the U. P. (4816) and is shipped to the Orient from Portland. When it is taken from the south by the Sunset route it is shipped to the Orient from San Francisco. He doesn't think they ever bring any up to Portland via that route.

General agents.

It has been the practice of witness to maintain general agents or commercial agents at Chicago, Pittsburg, New York, Philadelphia, Boston and Buffalo. They get all of the business they can that the railroad is able to carry and route it over its line. It includes transcontinental and Asiatic business. The agents of the N. P. meet with competition at such places with agents of the S. P. and the U. P. Recently witness has met agents who represent both the S. P. and the U. P. Witness feels that those commercial agents are a great assistance. The N. P. does not do a large Winter tourist business. It goes further south. (4817) It gets a large Summer tourist passenger business from California returning via the N. P. in the Spring. "That I presume would be called Winter tourists." A great deal of the Winter tourist business is handled by round trip tickets. The business is solicited. The N. P. does not handle as much freight into San Francisco as it did prior to 1887, but handles some business there still.

Tourist business.

Not as much business into San Francisco as prior to 1887.

Business from middle west.

All the traffic in the middle territory of this country naturally, that is, the Pacific Coast traffic or Asiatic traffic from the middle territory both ways, going and coming, is to some degree competitive between these various lines beginning with the S. P. on the south, taking in the Santa Fe, the U. P. and the G. N. Some of it of course is quite strongly competitive between all the lines. The further east you get, and the further towards the south that you get. He thinks the S. P. are competitors for the Chicago business. The N. P. is very strongly, and all the other lines are that he knows anything about, and he supposes the S. P. is and he thinks they are in connection—either via the Illinois Central and New Orleans, or via some of their El Paso connections. He doesn't see why they should not be. If he was running the road he would be. The rates are so adjusted from New York and back nearly to Pittsburg or about to Pittsburg and Buffalo—in what is known as Trunk line territory—so that the S. P. and all these northern lines are competitive for Pacific coast business in that region.

Mr. Stubbs represented S. P. and C. P. at rate meetings.

(4818) At the railroad meetings which took place in the good old times prior to 1887, Mr. Stubbs or whoever represented the S. P. would also represent the Central Pacific route. "Q. So on the theory of my friends here he was representing competitive lines, was he not? A. I don't know what his theory is. Those are the two

lines that he represented." (4819) Witness has no personal knowledge of the legitimate Chicago business that goes to California via New Orleans and the Sunset route. It is 900 miles from Chicago to New Orleans. 900 miles from Chicago west would be about 400 miles west of Omaha. Witness does not think that a great quantity of California freight from Chicago is sent via New Orleans. He thinks it mostly went via El Paso.

Not much Chicago business to California via New Orleans.

(4820) "By Commissioner Lane: * * * Q. Has there ever been any competition from eastern points to San Francisco between the three roads, one on the extreme south, the Sunset Route, one in the center made up of the Union Pacific from Omaha west to Ogden, and from Ogden up to Portland and from Portland down to San Francisco by boat and the Northern Pacific from Duluth out to Puget Sound, and from there by boat down to San Francisco? A. I don't know that there has ever been any competition between the Union Pacific, Oregon Short Line and the Oregon Railway & Navigation Company, or the Southern Pacific for San Francisco business as against the Sunset Route. The Northern Pacific has done, when its facilities enabled it to do so, quite an amount of competitive business for San Francisco. We had a share, getting from six to eight per cent. of that business in the early days."

Does not know of competition between Sunset and Portland route of U. P. for San Francisco traffic.

N. P. had from 6 to 8 per cent of San Francisco business in early days.

It is no longer possible for the N. P. to get it; because the people won't patronize it. The short rail lines I think are preferable. They prefer the short rail lines. Witness could not, without figuring it up, tell the difference in distance between freight originating at Buffalo, going to New York by rail, and from New York around by water to Galveston, and Galveston to San Francisco by rail and freight originating at Buffalo, carried by the lakes to Duluth and from Duluth to Puget Sound and then down by water on the other hand; but he thinks it is 1,500 miles in favor of the line from Duluth via Portland and the water down, perhaps not over 1,200. The N. P. has the water haul at the western end and the other people have the water haul on the eastern end (4821); "but the advantages of the southern, Sunset Route on San Francisco business are very great. There is the water competition, they can take their business in New York, gather it up from the various producing points in New England and New Jersey, and adjacent to New York, take it into their warehouses in New York and put it all on to one steamer, and have it all reach New Orleans or Galveston at one time. I have understood —it may be good service—but I have understood it was lack of facilities that forced them to take that business right off that very day and send it up to San Francisco in special trains, but unfortunately the all-rail routes cannot equal that service on 6,000 tons of freight that is ready to go on the same day. This whole 6,000 tons on the Sunset Route gets there at one time. If it was not for that service all under one control I should feel quite like opening the line that you mentioned from Buffalo to the Puget Sound to the

Advantages of Sunset route.

Special trains.

Service under one control.

water and down to San Francisco, but I cannot do it because I have got to depend on a lot of lines between Buffalo and St. Paul to do that same service that they do with their boat direct to New Orleans. Q. It is because of the superiority of the route and the superiority of the service that there is not active competition between the Northern Pacific and the Sunset, for San Francisco business. A. We cannot equal that service."

N. P. cannot equal the service.

The N. P. has tried to equal it off and on for 20 years. "Every time that the boat service on the Pacific has been a little better we thought we could get in and do some of it, but we have failed almost every time. We do some business down there, enough so that we are mentioned in the expenses of weighing, and so forth, but not very much." The N. P. appears in the tariff; and has a through rate. Supposing that the Sunset Route and the Santa Fe and the U. P. and the Central and the O. S. L. and the G. N. and the N. P. were all owned by the same persons and all under a common direction as to traffic, that Mr. Stubbs was the traffic director, witness thinks that the same competitive business would exist then that exists now, and that there would be practically the same condition of things. (4822) He doesn't see how they could be either any better or any worse. The rates are not made by the overland carriers in any respect. They are made very largely by water competition, the Pacific Coast rates. "Of course there is no one connected with that trade but what will agree with me I guess, in saying that we get all we can out of it every time. Q. All you can on the freight? A. Yes, and it is pretty nearly the cost of handling the business."

Same competitive conditions would exist if all transcontinental lines were under one management.

So far as rates are concerned, or facilities are concerned and competition between the lines is concerned, his opinion is that that condition to-day would not be changed if all the lines were under a common ownership. "Comr. CLEMENTS. Why is that so—is it because they all act in unison now? WITNESS. I should hardly want to put it that way. Tariffs are made. I know of no two competing points in the United States where the tariff is different between points by different carriers over 24 hours or 30 days at least. Perhaps it might be now. Just as quickly as they can get them the same they must do of course, so that the tariffs are uniform. You cannot operate two roads having two sets of tariffs. Comr. CLEMENTS. Have there been conflicts and contests between competing carriers in years past in which the rates figure away down to almost nothing? WITNESS. Some very disreputable ones that I have been concerned in myself.

Tariffs are uniform.

"Comr. CLEMENTS. From time immemorial the public generally has believed that there was more vitality in competition and separate ownership, and separate action. Is that all a mistake? Has the policy of the Government been altogether mistaken in regard to that fact? Does it make no difference whether one man owns or controls everything or whether there is a dozen different inde-

pendent managements existing and independent ownerships? WITNESS. I think there has been a great deal of mistaken judgment in regard to that. I am not prepared to give a discourse on it myself." Witness doesn't think his opinion is rather speculative and theoretical as to what would be the effect if all of these roads were under one management. It is based upon a pretty long and hard experience and he has never known anything but temporary warfare and struggles between carriers to get a larger percentage of the business or something of that kind, that have made any very material difference in the rates, except that there has been a general decrease in them ever since he has been in the business.

Same service with roads under one management.

(4823) "By MR. SEVERANCE. Q. Just a word about this answer that you made to Mr. Lane that you think conditions would be the same if all the railroads now competing with each other were under one management. You don't think, do you, that if there was no incentive given to these separate lines to give good service—assuming the rates are uniform—that the same situation would exist that does to-day? A. I don't see why it should not. Q. Well, self interest is the strongest thing to move people to do things in this world. A. Yes, sir. Q. Now, if you own a railroad and I own a railroad and we are reaching the same points and I am trying to get the business and you are trying to get the business, although we may agree to charge the same rate, we will each try to give better service than the other. A. We each ought to try to give the best service we can.

(4824) "Q. If a shipper has a lot of commodities to transport and we are each after them and one of us is able to give the cars quicker than the other, he will get the business naturally? A. Yes, sir. Q. Or, if he can give quicker service in transit? A. Yes, sir. Q. You don't mean to say, do you, that if you eliminate all that activity, the situation will be just the same as it is now where that activity exists? A. I don't know what you mean by eliminating the activity. The management of the Northern Pacific Railroad, the only one that I know intimately about is putting on extra passenger trains to-day, locally in Montana where we have no competition whatever, because the people complain about waiting for our delayed overland train. We don't have to do that because there is any ownership except our own. * * * Q. You don't think it makes any difference if there are other lines preparing to take the business and give good service. You think the whole thing is done from a sense of duty and that competition does not cut any figure? A. That is my view."

Competition cuts no figure.

(4825) Witness thinks that where two roads are soliciting the same business between the same points that they might be called competitors for that business. The competition of lines west of Chicago reaching the Pacific Coast consists of each trying to get the business and carry it and get the revenue out of it. It has in the past resulted many times in one of the lines cutting the rates or

reducing the rates by tariffs or otherwise, when they thought they were not getting a fair share of the business, or when they thought someone else had gotten in before them. Witness thinks that if all the transcontinental lines were owned by one corporation the service would be as good as it is now and the rates would be practically the same. Witness thinks the competition would be the same if they all belonged to one corporation. Each railroad would have to have its corps of officers who would be compelled to get all they could for their lines.

Reductions would be made.

(4826) Witness thinks reductions would be continually made, but not against each other. "Q. There would be no interest for doing it. A. There would be a reduction to get the business." (4827) Witness thinks that the substitution of one rate maker for two rate makers for those two roads (N. P. and G. N.) would have no effect upon the possible reduction of rates. Assuming that the man handling them handled them to the best of his ability. He thinks that there is some value in competition between roads in the securing by the shipper of facilities in transportation. "Q. That is, under the present condition of things it would be far better to have roads competing between each other than to have one (4828) road own all the transportation facilities of the country, so far as the shipper getting his car is concerned. A. I would not want to say yes to that question just in that way. I think there are conditions under which competition, perhaps—where a would-be shipper has got better service by there being two roads, than where there was one. I think those are rather exceptional cases, though. It depends largely on the management." (4830) The N. P. has no arrangement with the S. P. of any kind and receives no benefit from staying out of San Francisco business.

Conditions where two roads would be better than one.

(4831) If he used the water and got his road a little of the San Francisco business, he doesn't think the S. P. might compromise by not going up into Puget Sound territory. "The rate from every point in the east to San Francisco is exactly the same as it is to Seattle, that is near enough for all practical purposes. The distances are about the same. Now, in cutting that we might get a small amount of business, on the small amount of business that we should get from San Francisco we would have to carry through a very large business on our own reduction of that rate. We cannot reduce the San Francisco rate without reducing the Puget Sound and Portland rate. If I could I think I should carry a larger percentage of the San Francisco business than I do, but I cannot do it. I have got to pay the penalty myself by cutting the rates on our own business. Q. That is the reason, I suppose, that it is not wise for them to carry business up into your territory from San Francisco by water, because you have got to treat your terminal rates on San Francisco Bay and Puget Sound as sacred to yourselves? A. I don't know whether it behooves them any to do some of it or not, but there is not any understanding with us in regard to it."

Effect of cutting rates to San Francisco.

If witness was traffic manager for all the transcontinental roads and their earnings were going into the pockets of the same owners, (4832) no matter from which line the earnings came, he would still be under every inducement to make the best possible showing that he could for the N. P. and earn all that he could for the property. If the owners called on him for increased earnings or increased dividends, he doesn't think it would be much easier for him to produce that result than it would be if there were half a dozen different managers representing half a dozen different complicated ownerships in these several roads. He thinks if he was running one of them he could do that a good deal easier than he could if he was running all of them. (By Comr. CLEMENT.) "Q. You think you could increase the rates on your road and manage in competition with the others easier than you could if you managed all of them? A. Yes, because we could not raise the rates without your consent. Q. You could not? A. Not very much. You would be sort of watching over that, I guess. Q. We might be doing something about it. We don't make your rates. A. No, but you do not allow any raise of them without giving you thirty days' notice that we are going to, and people these days don't stand a raise very pleasantly.

If witness were traffic manager for all the lines.

(4832) B. CAMPBELL

Campbell.

Testimony given before Interstate Commerce Commission on January 21, 1907, in the city of Seattle.

Witness lives at St. Paul; fourth vice-president of the G. N. Has occupied that position two years. Has charge of the Traffic Department. (4833) For fifteen years prior to that was general freight agent and traffic manager and assistant traffic director of the O. R. & N. and the U. P. He was general freight agent and the traffic director of the O. R. & N. and its predecessors before the receivership, and was for a time assistant director of traffic of the U. P., O. S. L., O. R. & N. and S. P. Witness was Mr. Stubbs' assistant at Chicago. He was there two years and left at the end of 1904. He was succeeded by Mr. Store. Immediately prior to going to Chicago with Mr. Stubbs, witness was traffic manager of the O. R. & N., with headquarters at Portland. He occupied that position seven or eight years. Before that was general freight agent.

St. Paul. 4th Vice Pres't G. N.

Former traffic director, O. R. & N.

(4834) As general freight agent had no jurisdiction over the passenger department. As traffic manager also had jurisdiction over passenger matters. When witness was with the O. R. & N., that company had rail lines extending into Oregon and Washington, probably a thousand miles; certain steamboat lines on the Willamette. Columbia and Snake Rivers; a line of steamships between Portland and San Francisco, and between Portland and the Orient. The main line of railroad extended from Portland to Huntington and made connections at Huntington with the O. S. L. That in turn connected with the U. P. at Ogden or Granger. There was a

Lines of O. R. & N.

through freight service and a through passenger service. The through passenger service extended to Chicago via the Northwestern, and the through freight service from Council Bluffs, and points east by connecting lines. The boats on the Willamette River ran between Portland and Corvallis; that is substantially 100 miles from Portland.

Willamette River boat line.

The service with those boats varied according to the stage of the water. It was daily service as far as navigation would permit, say as far as half the distance, and irregular service beyond that. That line did both a passenger and freight business, both up into the country and back from the river. One steamship line ran from Portland to San Francisco. (4835) Those ships were owned by the O. R. & N. There were three of them for the most part. They had a tonnage of about twelve and fifteen hundred tons each. Those ships were engaged in both passenger and freight traffic between Portland and San Francisco. These steamers took down to San Francisco some of the traffic that originated up the Willamette River and which was brought into Portland by its steamships. That traffic consisted chiefly of farm products, wheat, oats, potatoes, hay —not much hay—some paper manufactured on the Willamette River.

Steamship line between San Francisco and Portland.

The hops moved principally by rail, occasionally some went by steamer. As to that traffic along the Willamette which the O. R. & N. brought in from the country, its line of steamships was in no particular competitive with the S. P. line running south from Portland. The S. P. did not assume or undertake to meet the competition of the ocean line. Nor were the through line from the Willamette Valley points and the S. P. competitors. What witness meant by competitors is, they did not make the same rates. He doesn't think the S. P. solicited the business actively or if it carried any of it. Up to the time he was familiar with the situation the S. P. did not attempt to make rates from that territory south that were low enough to compete with the ocean, with the all-water carrier.

Willamette valley traffic.

S. P. did not meet competition of ocean line.

(4836) The business transacted by the boats on the Willamette River was competitive with the S. P. into Portland, as to practically all the traffic. And from Portland on that traffic moved largely by steamer. Witness does not think that potatoes moved to any considerable extent from that same region south to San Francisco over the S. P. where it was competitive with the all water route. He doesn't think that from that same region that was tapped by these steamboats on the Willamette, potatoes moved south over the S. P.; not to his knowledge. When the potatoes were beyond the reach of the all-water carrier, south of Salem or Eugene, they would move south over the S. P. Witness does not think potatoes moved by rail from Salem to San Francisco. From points farther south, where they were remote from the all-water route, witness thinks they did. Generally speaking, witness thought that there was no substantial

Traffic on river competitive into Portland.

Potatoes not competitive.

competition between that water route, up the Willamette, on potatoes as against the S. P. to San Francisco. He thought the all-water route virtually controlled the business.

(4837) Hops were carried by the boats to a limited extent. "Q. And were they also carried south by rail? A. We carried through to the seaboard by rail. They didn't as a rule go to San Francisco by rail." The hops originating in the Willamette Valley moved to the Atlantic seaboard over the Sunset Route, and also by the U. P. route. He doesn't think that to any extent hops moved by this steamship route to San Francisco and thence transferred by rail to the seaboard; he does not know of any such case. There is not a considerable amount of passenger traffic over these boats of the O. R. & N., except between Portland and San Francisco, probably. There was a large traffic in that. There was also a passenger traffic between Portland and San Francisco by rail. And as to that business, the line of steamers that was run by the O. R. & N. and the all-rail route of the S. P. were competitors.

Hops.

Passenger traffic between Portland and San Francisco.

(4838) A small quantity of the business originating in the Atlantic seaboard territory moved to Portland by the Sunset Route. The larger part of the business from that same territory came to Portland all-rail over the U. P. and the N. P. The rates over these three different lines of communication were generally equal. As to the S. P., Sunset Route, cutting the rates some ten years ago in competing for that Portland business as against the U. P. line and the N. P.: Witness has been told that the rates were cut, but as a matter of fact he does not know that they were. That business for which they were competing in that way was merchandise and things of that character coming through from the seaboard territory. With reference to this cut in the Portland rate by the Sunset Route, witness doesn't think that the S. P. got at any time more than from three and five per cent. of the Portland competitive business. That is his best judgment, based upon his general knowledge of the situation.

Seaboard traffic.

S. P. at no time got more than 5 per cent of Portland competitive business.

(4839) A short portion of the time, in those days, the O. R. & N. maintained one agent in Chicago, but generally speaking they relied upon the Union agencies to secure the business. There was a steamship line operated from Portland to the Orient, known as the Dodwell Line, prior to 1901. Witness presumes it was in 1897. They operated for three years. Those ships touched at regular ports of call in Japan and China,—the same ports to which the ships of the Pacific Mail and the San Francisco lines proceed. The O. R. & N. did not maintain commercial agents in the Orient and solicit traffic for that line. They got their traffic through Dodwell & Co. They maintained agencies. Dodwell & Co. had the ships under charter and were operating under a contract with the O. R. & N. The cargoes that they brought to the port at Portland from the Orient in so far as they were destined to points in the east were delivered to the O. R. & N., and went east over that line, and the

Dodwell line.

O. S. L. and the U. P. The traffic was distributed, generally speaking, east of the Missouri River and as far as the seaboard.

(4840) The ports of call witness spoke of in Japan and China were: Yokohama, Kobe, Nagasaki, and Shanghai and Hong Kong. After the Dodwell boats ceased running there, there was a line —an irregular service operated for a short time by vessels which a man by the name of Graham claimed to have under his control. After Graham quit, the O. R. & N. organized a corporation of its own to handle the steamship business, called the Portland & Asiatic. Witness believes that was in 1900. When witness left the service of the company, the ships of that line were still running. The O. R. & N. had a general agency at Hong Kong, soliciting business for those boats. Mr. Cameron was the agent. He is in London now, as European agent for the Canadian Pacific.

Graham's line.

Portland & Asiatic.

Passenger traffic on Willamette River.

(4841) The boats on the Willamette River carried passengers in a limited way from Salem down to Portland. The rates on the steamship line between Portland and San Francisco were substantially the same both winter and summer. After the U. P. purchased the stock of the S. P. in 1901, witness still continued in Portland as the traffic manager of the O. R. & N. In addition to that he occupied an advisory relationship to the S. P. After that time he reported to Mr. Stubbs in Chicago. Mr. R. B. Miller is the present general freight agent of the O. R. & N. He has occupied that position for about five years. Before that was general freight and passenger agent of the S. P. lines in Oregon for a short time. Previous to that was assistant general freight agent of the O. R. & N.

(4842) Mr. Morse was a soliciting freight agent in Portland for the O. R. & N. Mr. Coman was for a time general freight and passenger agent of the S. P. lines in Oregon. For a time prior to that, he was at Salt Lake City for the O. S. L. Mr. McCusker was soliciting freight agent for the S. P. lines in Portland. "Q. Do you recall, Mr. Campbell, that some time after the purchase of the Southern Pacific stock by the Union Pacific, that you called these various gentlemen that I have named, or at least a part of them, into a conference in your office in Portland and told them in substance that in the soliciting of business for these lines they should solicit the Atlantic seaboard business for the Sunset Route and business west of seaboard territory for the Union Pacific route unless the shipper was particularly anxious to have the stuff the other way, or in substance that? A. There was such a conference, but no such instructions were given. * * * The instructions were given that each representative should work for his own road in preference; failing to get the business that way, to work it for the other. Q. Wasn't it stated in that conference that the effort should be made to get the business from the seaboard routed over the Sunset Route? A. I don't think so. I don't think any such instructions were given, because I am sure that the Union Pacific was not put out of the seaboard business with its connecting lines. Q. That is not

Meeting of witness with soliciting agents in 1901.

Instructions to agents.

Instructions as to seaboard business.

what I am asking you, Mr. Campbell. I am asking you whether, as a matter of fact, in that conference you did not either instruct or advise, I don't care which you call it, that the business from the seaboard territory should be secured if possible (4843) without offending the shipper or disobliging him, over the Sunset Route? A. To the best of my memory, no, sir. * * * But to the best of my recollection the instructions were as I have stated them here this morning, that each man would work for his own interest; failing to get the business that way, to help out the other fellow. But I am quite positive in the nature of things that have existed, as they have existed since that time and up to the time I was last familiar with the workings of the lines, I am quite confident that the Union Pacific—that the instructions which you describe were not given."

Each man for his own interest; failing in that help the other fellow.

Prior to that time witness had never assumed to give any instructions to the S. P. soliciting agents. He assumed to advise them after that time, and in this particular case thinks he acted on his own initiative. "In general, of course the directions emanated, the general instructions emanated from Mr. Stubbs' office." (4844) His general instructions from Mr. Stubbs were that as to the business in Portland he was in chief control, so that he felt at liberty to call in the S. P. men and give them advice, or instructions. Witness has heard the Sunset route called the Hundred Per Cent. Route. Any line that gets the entire haul is usually described as the Hundred Per Cent. Route. Business originating on the seaboard, which came by the Sunset Route, a hundred per cent. of the revenue came to the S. P. The S. P. absorbed the rate into New York from points in New York state and Pennsylvania, as far up as an arbitrary of fifteen or twenty cents per hundred lbs. would take them, and they did that for the purpose of getting the business away from the all-rail routes.

Relations of witness to S. P.

100 per cent. route.

In Cincinnati witness thinks the business to San Francisco moved both ways, but most largely through the northern gateways to Portland. "I think it moved wholly by the northern gateways." Witness does not think there was ever an arrangement by which traffic came from the east over the Santa Fe to San Francisco, and thence to Portland over the boats of the O. R. & N. At one time there were boats running from Portland to Sound points. It was the year of the Seattle fire,—1889. (4845) At the present time witness is the vice-president in charge of traffic for the G. N. He did not publish rates into San Francisco from the Sound points—he published through rates to San Francisco, going by rail over the G. N. and then from Sound points down to San Francisco by the Pacific Coast Steamship Company. The N. P. publishes rates the same way. That moves over the Pacific Coast Steamship Company. "Q. Do you happen to know whether any traffic moves to Sound points from San Francisco originating on the line of the Union Pacific or its connections or the Sunset Route by way of these boats

Cincinnati traffic.

No Portland route via Santa Fe.

San Francisco rates via Puget Sound.

of the Pacific Coast Steamship Co.? A. I do not know of any, no, sir."

O. R. & N. and G. N.

The Pacific Coast Steamship Company has been running a long time. Witness is not an officer or director in it. The O. R. & N. makes a junction with the G. N. at Spokane. Business moves to Portland from eastern points by way of the G. N. and Spokane and thence over the O. R. & N. From points in the east generally, east of the Missouri River meridian. Perhaps some lumber and shingles, and maybe a little salmon, but he thinks nothing beyond that, moves from here to points in Utah, such as Salt Lake by way of the G. N. (4846) to Spokane and thence by the O. R. & N., and thence down over the Short Line. Lumber moves to the east by the O. R. & N. from Portland and that region. It formerly moved to the east by way of the Ogden gateway, going from Portland to Sacramento, and at the same time moved to the Ogden gateway by the O. R. & N. and the O. S. L.; thence went on to the east in those days over the Rio Grande or the U. P. There was a time during witness' connection with the O. R. & N. that it was independent of the U. P. The first control secured by the U. P., witness thinks, was in 1889. He is not very certain of those figures. Afterwards the U. P. receivership lost control of the O. R. & N. in 1894. Mr. O'Neill was appointed receiver on the 4th of July, 1894. The O. R. & N. was reorganized on August 17th, 1896.

Lumber to Salt Lake.

O. R. & N. connections during receivership.

(4847) During the time the stock ownership of the O. R. & N. was not in the U. P., or during the time that it was operated by the receiver, Mr. O'Neill, the O. R. & N. still maintained its close relations on eastern business with the O. S. L. Its two principal connections to the east were via the G. N. and the O. S. L. The third route was via Wallula and the N. P. After the U. P. had acquired control, eastern shipments were solicited over the O. R. & N., the O. S. L. and the U. P. The steamships picked up at San Francisco, commodities that were brought from New York by way of the Isthmus of Panama, consigned to Portland.

Portland business via Panama.

Steamship lines under Mr. Schwerin.

(4848) The steamships between Portland and San Francisco were taken out of the O. R. & N. and put into a separate corporation sometime in 1903 and Mr. Schwerin of San Francisco was placed in charge of those boats. He has also been placed in charge of the P. & A. line since that time. Witness believes that he is also in charge of the Pacific Mail. From 1886 to the Spring of 1902 witness was the chief officer in charge of the freight traffic of the O. R. & N. In 1902 he became assistant traffic director and had headquarters in Chicago, and held that position for the U. P. and the S. P. There were other steamship lines operated between San Francisco and Portland at the time the O. R. & N. operated that line. That line was in operation when witness went to that company. They were then operating three boats, (4849) the Elder, Columbia and Oregon. They were of about 1,500 tons each. The Columbia may have been about 1,800 tons. The southbound cargo consisted

Steamship lines between San Francisco and Portland.

almost entirely of farm products originating in the Willamette Valley and along the line of the O. R. & N. They did not carry a great deal of lumber; some. The S. P. did not seriously attempt to compete for the traffic along the Willamette River to San Francisco. Willamette river traffic.

Any competition that it engaged in with the boat line was to Portland. That was between points wholly within the state of Oregon. As to the passenger traffic that moved over that line, the rate was not an important factor in that competition; it was a limited factor. In the winter season it was a question of choice,—well, both winter and summer it was a question of choice with the passenger. In the winter time they preferred the rail line and in the summer time more of them preferred the water. After the U. P. acquired the stock of the S. P. in 1901 so far as the witness' knowledge goes there was no appreciable change in the course of that business—the business of these boat lines and the S. P. lines to San Francisco—neither in the rates nor the character of the traffic. Up to the time that his connection with these properties ceased in 1903,—conditions have continued about the same as before. (4850) His recollection is that they usually classed the Sunset and Gulf route to Portland as a three to four per cent. route. As to the relative distance via that route as against the all-rail lines that handled the bulk of the business, it is as far from New Orleans to Portland as it is from New York; then there was the water haul in addition from New York to New Orleans. The Sunset Route as to Portland business from the Atlantic seaboard, was virtually an impracticable route. Wholly within state. Matter of choice between sea and rail. No change in 1901. Sunset classed as a 3 to 4 per cent route.

Samuel Samuels & Co. was the first line that operated from Portland to Asiatic ports in connection with the O. R. & N.,—no, Frank Upton put on a line, "oh, I guess as far back as 1885." The O. R. & N. Co. did not own that line. Upton was followed by Samuel Samuels & Co. They commenced probably in 1887 or '88. Witness would not undertake to be at all definite on these dates because he doesn't remember them. Frank Upton quit, because there was no money in the business. The Samuel Samuels line quit for the same reason; and Dodwell following them quit for the same reason; and after that the O. R. & N. organized its own company, the Portland & Asiatic. The P. & A. lost money every year. Asiatic steamship lines. Frank Upton and Samuel Samuels & Co. No money in the business. Dodwell. Portland & Asiatic. Lost money.

(4851) Those lines were established solely for the purpose of affording an outlet at Portland for the products, agricultural products, produced along the line of the O. R. & N. as against the competition of the N. P. bringing those products into Puget Sound where they could find an outlet. The principal product was wheat and wheat product,—flour. That flour moves largely to Asiatic points. If those lines had not been established, that wheat originating,—wheat and other farm products originating on the rail lines of the O. R. & N. Co., would have gone very largely to Puget Sound and sought an outlet that way, reaching the Sound by the N. P. The O. R. & N. felt that it could recoup itself somewhat for the Line established to handle wheat and flour. Without those lines, wheat would have gone to Puget Sound.

loss of the steamship lines by holding this traffic to its rail lines. That was the principle on which they acted.

Arrangement with Dodwell line.

The arrangement between the O. R. & N. and the Dodwell line was for interchange of traffic on a division of the through rate. The O. R. & N. did not charter the boats; did not own the boats; and had no interest in the profits of the boats. It made no guarantee against losses. In other words, it was a connecting rail and steamship line under separate management but with arrangements for through rates and interchange of business. That arrangement continued for about three years. The arrangement with the Samuel Samuels line, and also with the Upton line, was of substantially the same character. Each of these lines after trying the business for a while, quit because they could not make any money.

Arrangement with the other lines.

O. R. & N. forced to organize its own line.

O. R. & N. had to pay its guarantee.

(4852) The P. & A. was organized by the O. R. & N. because it could not arrange with others satisfactorily to maintain a line there. The O. R. & N. made a guarantee for a time to the Samuel Samuels line, particularly on flour. It had to pay the amount of the guarantee. The sailings of these ships were monthly. "Q. Wasn't it impossible for them sailing only monthly to compete with Asiatic ports, particularly from points east, with the lines via San Francisco, the Pacific and O. & O.? A. They handled practically no business from the east." The demands of the flour traffic had the first call on the tonnage of the vessels. They handled practically no tonnage from east of the Missouri River, very little. On the inward trips of the line of steamers, they handled some, picked up some business in Asiatic ports, for the various ports of the United States. Witness thinks the volume of that would not exceed an average of a thousand tons a month. The business of those ships was, witness thought, about ninety per cent. westbound and ten per cent. eastbound.

No business from the east.

Small amount of inbound business.

90 per cent westbound; 10 per cent eastbound.

Though the G. N. has in rates to San Francisco via the Pacific Coast Steamship lines, substantially no (4853) business really moves under those rates—that is, far eastern business. Far eastern business is business east of St. Paul and Minneapolis. There is business moves west of these points, eastern Washington and Montana. But there is substantially none from points east of the Missouri River. Witness does not know how long these rates have been in. They were there when he was there. Witness thinks the G. N. has in similar rates via the O. R. & N. and steamers down by way of Portland, to San Francisco; it did have. He thinks those rates are in yet. The result via that line is nothing, "our eastern business,—I don't know that we handled even any Montana business that way. I guess they are practically—I guess the business is practically *nil* via that route."

Substantially no eastern business via Puget Sound.

No business via Portland.

Lumber via S. P.

Lumber formerly moved from Portland via the S. P. to Ogden and points east of Ogden; chiefly to points reached on and by the Rio Grande road and some of the U. P. This testimony was based

on what he knew to be the situation say prior to two years ago. He does not know whether it moves that way to-day or not. "Q. And that business originated at Portland proper, not at points south of Portland. A. Some of it originated at Portland proper. Q. What was the amount of that business; was it considerable or insignificant, Mr. Campbell? A. Well, I think it was moderate; I do not remember just what the volume was; I do not think it was heavy. Q. Wasn't there an abundant supply of lumber on the Southern Pacific line south of Portland? A. Yes. Q. To move that way it had to be carried over two ranges of mountains, didn't it? A. Four of them."

(4854) Assuming that the U. P. lines and the S. P. were entirely separate with reference to ownership, and that the O. S. L. and the O. R. & N. are a part of the U. P., treating that as one line—at one time prior to the receivership the U. P. interests, those lines were all operated by the U. P. under one common control—that line made up of the U. P. and the O. S. L. and the O. R. & N. to Portland and thence via boats to San Francisco, never competed at any time prior to 1901 for business with the S. P. for California points; because it was an impracticable route at even rates and the U. P., to open such a route would stand to lose more from diversion of business that the S. P. or Central Pacific could make to its competitors, than it would gain by opening the Portland route.

No competition with S. P. via Portland route.

If witness was in charge of the traffic of the U. P. and the O. S. L. and the O. R. & N., and was working in the interests of these lines alone without any regard to the interest of the S. P. lines, he would work that business by way of Ogden. He would consider it to the interest of his lines to manage it that way. He would consider it practically suicidal from the railroad standpoint to try to work that business by way of Portland. It has always been worked by way of Ogden, ever since he has known those lines.

Would work all U. P. business to California via Ogden.

Has always been worked via Ogden.

(4855) The boat operating on the Willamette River above Salem, had a capacity of 75 tons. It ran about once a week. Her draft was six inches light. The occasion of this light draft was shallow water. The river was full of snags. The boat did not always have water enough to operate above Salem during the entire year. Above Salem the boat tied up about nine months of the year, above Independence. (4856) The boat just referred to by witness was wrecked. The name of the boat was "Gypsy." Witness thinks three boats were operated below Salem. Salem is 50 miles by rail from Portland, and about 75 by river. It took the boats all day to go down and make all the landings. Generally they would leave Salem about 6 and get in about 4:30 in the afternoon. The boats did more or less business from Oregon City and from Salem. The Oregon City business was for the Paper Company, and the Salem business was for the flouring mills. The flouring mills ran elevators along the line of the O. R. & N.

Boat service on Willamette River.

Rates in Willamette Valley.

The rates in the Willamette Valley were established longer ago than witness knows anything about. They have been practically permanently maintained during the whole entire period that witness knows of. (4857) The Portland flour mills were parties to the subsidy with the Samuel Samuels line. They were interested in that line, in order to secure an outlet for their flour. They owned mills on the lines of the O. R. & N. The Portland Oriental line was established practically altogether for the accommodation of that particular mill. It had no other reason really for its existence other than that. The largest mill about which witness has been testifying is located at East Portland. They have mills at Spokane and Dayton. Their flour also moves down the coast in the O. R. & N. ships. Some of it was trans-shipped at San Francisco. Witness does not think that any of the flour went to New York, or any points in the Atlantic seaboard. He thinks their business was all on the Pacific side.

Portland flour mills responsible for Portland & Asiatic.

None of its flour moved by rail.

None of their flour that witness ever knew of moved by rail. (4858) Oregon City, where the paper mill is located, is 16 miles from Portland. The paper moved to San Francisco by boat. Witness thinks it all went by boat. He feels confident that it did. That all came into Portland and went down the coast on the O. R. & N. boats.

Flour from Oregon City moved to Portland locally and to San Francisco. No flour that witness ever knew of moved to San Francisco by rail. It always went by the O. R. & N. boats. (4859) A little hard wood lumber was brought in by the Willamette River boats, but not a large volume of it. A small amount of wool was brought in by those boats. Witness thinks that the wool ultimately moved east over the O. R. & N. Wool from Willamette Valley points also moved east over the S. P. either via Sacramento or Sunset route. The rail line and the boat line were both soliciting passenger traffic between San Francisco and Portland, and got all the business they could. Grain of several kinds and potatoes moved from the Willamette Valley into Portland by the S. P. Witness thinks that some of those products that came in by the S. P. proceeded to San Francisco by boats other than the O. R. & N. boats. The other boats participated in the general traffic from Portland. The California and Oregon Steamship Company ran those other boats. Their headquarters were in San Francisco. The O. R. & N. boats had a three-day service.

Wool.

Grain and potatoes.

(4860) Witness means a sailing every three days. In stating that the route from the Atlantic seaboard to Portland via the Sunset Route was impracticable, witness meant that as a rule business would go through quicker all rail direct, than it would by Morgan steamers to Texas, and thence by rails. Witness does not think it is a fact that the S. P. line from Ogden to the coast was very largely dependent upon the U. P. for its business. The U. P. was as dependent upon the S. P. as the S. P. could possibly have been upon the U. P. (4861) Witness does not think that the U. P. was so situated that it could compel the S. P. to deal fairly with it; because

it is a physical impossibility for the U. P. to control anything like the volume of business over a route through Portland to San Francisco that the S. P. could take away from it by way of Ogden. Witness regards the position of this route to the coast as of no advantage whatever to the U. P. in the way of securing fair treatment from the S. P. "Q. Not as an equalizer of divisions or anything? A. Not at all."

Portland route of no advantage whatever to U. P.

Witness thinks the S. P. Sunset Route is a great deal stronger line, and in addition it has to be a stronger line in taking freight from the seaboard to San Francisco than it would be possible for the line as formerly described through Portland, because the S. P. owns the entire line through, and it is possible for it to give better service and make better time on the through eastern competitive business than it would be for the U. P. to give by way of Portland. (4862) Witness thinks it is farther from New York City by the Sunset Route to San Francisco than it is all-rail from Chicago via U. P. to Portland and down. "Q. And therefore you think the advantage lies with the Sunset by reason of the fact that it owns its own rails all the way from Galveston to San Francisco? A. And the steamship lines through the seaboard. Q. Certainly; but the Union Pacific owns its steamship lines. I was getting at the point of destination in your mind, and that is the fact, that you think that the connections of the Union Pacific east would be slow in transporting freight and making deliveries? A. I do."

Advantages of Sunset route.

(4863) One of the great advantages of the S. P. Sunset Route is that with its own steamers in New York it can gather the cargo and take it to New Orleans or Galveston in solid cargo lots and load it into train loads, whereas the all-rail route like this, for instance, the G. N. has to depend on its connections—delivering it in carload lots. The all-rail route from New York to San Francisco, made up by the G. N. and the N. P and the boat lines between Puget Sound and San Francisco, is shorter than the Sunset Route from New York to San Francisco,—notwithstanding which fact, the G. N. is not able to move any business of consequence by this Puget Sound line. If the U. P. and the S. P. were entirely separate and distinct in their ownership and the U. P. should attempt to use this route via Portland to San Francisco as a club against the S. P. and if the witness was acting for the S. P. with the Rio Grande connection at Ogden and the east, he thinks that he could hold his own for the S. P. as against the U. P. in a contest of that sort. (4864) He thinks that the U. P. would fare the worst.

In contest with S. P. over Portland route, U. P. would fare the worst.

At Ogden the U. P.'s only connection to California, outside of the San Pedro road, is the S. P., whereas the S. P. may turn its traffic over to either the U. P. or the Rio Grande. The Rio Grande in turn connects with the Burlington, the Rock Island, the Missouri Pacific and Santa Fe, in the east. In referring to the S. P.'s Portland business as being a three, or four, or five per cent., witness meant eastern competitive traffic. Of all the competitive traffic into Portland, witness would not regard the S. P. as exceeding a three to

Percentage of Portland business handled by U. P. and other lines.

five per cent. line. (4865) He is not prepared to state what percentage of the seaboard business they handle. At one time a percentage as high as 85 per cent. of that competitive business came over the U. P. and the O. R. & N.

Witness believes that the U. P. now takes into Portland probably 40 per cent. of the business. In 1900 he would put it at about 50 per cent., and the S. P. at that time, from 3 to 5, say 5 per cent. The G. N. had a little of it. The G. N. got it over the O. R. & N. Witness means that the U. P. had about 50 per cent. of the whole. The balance of it was distributed with the other lines, the G. N., N. P. and Sunset. Witness does not think the Canadian Pacific shared in the business. Witness thinks the G. N. got 15 or 16 per cent., and the N. P. somewhere around 28 or 30. (4866) Witness thinks it might be safe to say that the Sunset handled of the strictly Atlantic seaboard business, probably 20 to 25 per cent. There is very little of that business. Witness thinks the Sunset Route to Portland is physically an inferior route to the others. "It is a mere guess on my part to say that they get 25 per cent. of the seaboard business. I don't know as a fact." A large amount of structural steel and steel product is shipped from the east to the coast. Witness does not regard that as seaboard business. It is interior business.

EXHIBITS.

(4867) Defendants' Exhibit 243 is a tabulated statement showing additional main tracks of the Santa Fe, taken from its annual report for the fiscal year ending June 30, 1909. It shows 492.80 miles of second main track operated by that company. (4868) Defendants' Exhibit 244 is a tabulated statement showing second track of the N. P. and controlled lines as set out in its annual report for the fiscal year ending June 30, 1909. It shows 233.11 miles of second track. (4869) Defendants' Exhibit 244½ is a map of the N. P. Railroad, which under stipulation of parties is introduced in evidence without being printed. (4870) Defendants' Exhibit 245 is a portion of the track statement of the G. N. and proprietary companies, found on page 41 of the 20th annual report of that company, for the fiscal year ending June 30, 1909. It shows a total of 141.06 miles of second track. Defendants' Exhibit 246 is a map of the G. N., admitted under the stipulation above referred to.

Mahl.

(4870) WILLIAM MAHL (2).

St. Joe & G. I. stocks owned by U. P.

I am the Comptroller of the U. P. and S. P. systems. I have a statement of the stocks of the St. Joseph & Grand Island Railway Company, owned by the U. P., drawn off the books as of March 4, 1910. No change has occurred since that date. (4871) This statement is Defendants' Exhibit 247. Defendants' Exhibit 248 is a statement of the "investment stock owned March 4, 1910," by the U. P.

N. P. and G. N. holdings sold.

(4872) The stockholdings of the U. P., or of the O. S. L. and O. R. & N., in G. N. and N. P., and in Atchison preferred, have been sold, the last N. P. on November 19, 1908, the last G. N.

April 6, 1909, and the entire holdings of the Atchison stock July 31, 1909. The S. P. in December, 1900, issued bonds secured by mortgage, which has been referred to as the 2-5 year mortgage, the assets of the company being pledged to that mortgage to the extent of all available unpledged assets in the treasury. From and including the year 1901—fiscal years—the purchase or purchases of S. P. stock by the U. P. has been reported yearly to the Interstate Commerce Commission. (4873) The purchase of the 74,000 shares of S. P. stock testified to by Mr. Kahn, began after the first of January, 1910, although I am not certain. I can refer to the copy of the resolution which authorized the purchase. That purchase has not yet been reported to the Interstate Commerce Commission. The term "auxiliary companies" in Defendants' Exhibit 248, means the O. S. L., and the O. R. & N., of which the U. P. owns the stock, the three constituting the U. P. Railroad System. The Railroad Securities Company, mentioned in Defendants' Exhibit 248, owns nothing except stock of the Illinois Central.

S. P. 2-5 year mortgage.

Purchases of S. P. stock reported to I. C. Commission.

(4874) It owns 92,000 shares, $9,200,000, of the Illinois Central stock. "Q. To get at the total holdings of Illinois Central stock of the Union Pacific and Auxiliary Companies, you would have to add $9,200,000 to the $23,700,000 shown as directly owned in this statement? A. Not entirely. The 80,000 shares are subject to a lot of certificates which the Railroad Securities have outstanding. Q. In the nature of a bond? A. Yes. Q. But for voting purposes the Railroad Securities Company votes the stock, doesn't it? A. I don't know; I couldn't say as to that. Q. Do you remember the outstanding obligations secured by the pledge of the stock of the Illinois Central owned by the Securities Company? A. 80,000 shares. Q. I say what is the extent of the debt secured by that 80,000 shares? A. I don't recall now." (4875) We have increased our holdings of Railroad Securities stock to a slight extent, since the testimony was given, which includes Harriman Exhibit No. 2, page 746, Vol. II of the Record. We then had $3,415,400 of the common stock, we now have $3,483,400; $1,898,400 par value of the preferred stock then, and now $1,935,900. We own within .07 of one per cent. of the whole of this stock. Exhibit No. 2 just mentioned shows our ownership of $18,623,100 par value Illinois Central stock; and we now own directly $23,700,000 par value, or about $5,000,000 additional, the additional stock being all by subscription rights. Complainant here offered in evidence certified copy Minutes of Executive Committee U. P., meeting of May 29, 1906, relative to the purchase of St. Joseph & Grand Island stock.

Holdings of Ill. Central.

Action of Ex. Com. as to St. Joe & G. I. stock.

(4879) The additional shares shown by Exhibit 247 were bought last fall, beginning in October, in the open market, under a resolution of the Board of Directors. (4880) The increased holdings of the O. S. L. in Chicago & Northwestern common stock, $4,018,750 now, as per Exhibit 248, as against $2,572,000 as of July 13 and 16, 1906, was acquired under subscription rights, the relative holding re-

Investment securities.

maining the same; so, also, with the New York Central stock, $17,857,125 per Exhibit 248, as against $14,285,745. The holding in Chicago & Alton Preferred has not been changed, nor in Baltimore & Ohio Common or Preferred, the present total holding of S. P. stock, $126,610,000, out of the total of $272,672,205, or 46.43 per cent., includes the recent purchases and is the total holding now.

S. P. 2-5 year mortgage.

(4881) The two-five year mortgage of December, 1900, was a collateral trust bond running for five years, with option of retirement in two years, for $30,000,000 to raise money for betterments and additions, and to pay off certain floating debts. The bonds were sold prior to the acquisition of the S. P. stock by the U. P. The mortgage shows the nature of the assets pledged—bonds and stocks which the S. P. had acquired from time to time, in addition to the stocks which were pledged collaterally against the issue of its own stocks, bonds of the Houston, East and West Texas, the Houston & Shreveport, the Gila Valley Globe & Northern, Maricopa & Phoenix, and various stocks of small collateral lines which the Company had acquired, constituting free assets not previously encumbered.

United States v. Union Pacific Railroad Company, et al.

DEFENDANTS' ABSTRACT OF TESTIMONY.

TESTIMONY FOR DEFENDANT.

VOLUME XI.

NEW YORK CITY, MARCH 24, 1910.

(4883) C. S. STEBBINS (3)

I have a statement here as to the Asiatic business eastbound through San Francisco by the Sunset Route, Defendants' Exhibit 249, as follows:

DEFENDANTS' EXHIBIT 249.

(Stebbins)

SOUTHERN PACIFIC COMPANY.

ATLANTIC STEAMSHIP LINES.

Statement of tonnage and revenue accruing to system lines on business received from China and Japan, for fiscal year ending June 30th, 1900.

Tons	Ship revenue	Rail revenue	Total system revenue
7	$36.46	$171.86	$208.32

AUDITOR'S OFFICE,
New York, N. Y.,
Jan. 12th, 1910.

(Sgd) B. G. BARTHOLOMEW, *Auditor.*

(4884) This statement was prepared from the books of the Company. I have prepared, from the records of the company, a statement of the freight traffic to points in the Willamette Valley, Oregon, excluding Portland, via U. P. System, Granger, Wyoming, and Portland, Oregon, from eastern territories, for the fiscal year ending June 30, 1900, with detailed statement attached, specifying the points served and not served by the river boats. These papers—Defendants Exhibit 250, are as follows:

DEFENDANTS' EXHIBIT 250.

(Stebbins)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Granger, Wyo., and Portland, Ore., from eastern territories specified below, for fiscal year ending June 30, 1900.

From—	Tons carried	U. P. Sys. Frt. Revenue
Missouri River and common points territory	90.22	2,944.29
Mississippi River and common points "	50.01	1,758.45
Chicago and common points "	332.49	10,773.06
Cincinnati, Detroit and common points "	80.85	2,121.53
Pittsburg, Buffalo, and common points "	27.15	997.03
New York, Boston, and common points "	216.90	6,528.20
Total	797.62	25,122.56
To points served by Willamette River boats	513.78	16,229.20
To points on S. P. Co. not served by Willamette River boats	283.84	8,893.36
Total	797.62	25,122.56

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

(4885)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Granger, Wyo., and Portland, Ore., from eastern territories specified below for fiscal year ending June 30, 1900.

	To points served by Willamette River boats		To point on S. P. Co. not served by Willamette River Boats	
	Tons carried	U. P. System freight revenue	Tons carried	U. P. system freight revenue
From Missouri River and common points territory to—				
Albany	3.57	141.08	.....	.....
Corvallis	1.65	68.07	.....	.....
Dallas	1.88	62.56	.....	.....
Dayton	.32	17.59	.....	.....
Independence	3.00	112.95	.....	.....
Newburg	.58	55.19	.....	.....
Oregon City	.98	50.82	.....	.....
Salem	14.02	526.48	.....	.....
Wilsonville	.54	17.33	.....	.....
Aumsville	.....	.....	.18	5.82
Aurora	.....	.....	.23	5.92
Canby	.....	.....	2.43	70.66
Coburg	.....	.....	.09	3.46
Cottage Grove	.....	.....	.09	3.22
Dundee	.....	.....	.08	7.45
Eugene	.....	.....	18.39	483.73
Forest Grove	.....	.....	6.33	202.99
Gervais	.....	.....	.13	4.92
Halsey	.....	.....	1.32	47.97
Harrisburg	.....	.....	1.20	85.65
Hillsboro	.....	.....	.83	26.85
Jefferson	.....	.....	1.79	57.86
Junction City	.....	.....	.47	16.18
Lebanon	.....	.....	1.74	86.88
McMinnville	.....	.....	5.68	179.79
Mayfield	.....	.....	.34	14.23
Monitor	.....	.....	.60	20.20
Monmouth	.....	.....	2.23	74.33
Natron	.....	.....	.07	2.34
North Yamhill	.....	.....	10.00	174.40
Scio	.....	.....	1.65	58.34
Shedds	.....	.....	1.16	36.95
Silverton	.....	.....	.92	33.20
Stayton	.....	.....	1.73	62.70
West Scio	.....	.....	.08	2.30
West Stayton	.....	.....	2.51	85.20
Woodburn	.....	.....	1.41	38.68
Total	26.54	1,052.07	63.68	1,892.22
From Mississippi River and common points territory to—				
Albany	1.34	59.03	.....	.....
Buena Vista	.05	2.31	.....	.....
Champoeg	.12	7.21	.....	.....
Corvallis	.38	21.57	.....	.....
Dallas	1.28	30.89	.....	.....
Independence	2.40	100.43	.....	.....
Newburg	1.58	68.54	.....	.....
Oregon City	6.35	238.45	.....	.....
Salem	9.93	377.63	.....	.....

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
From Mississippi River and common points territory to—Continued.				
Wilsonville	.79	28.80	.....	.....
(4886) Amity	.....	.....	.38	13.55
Aumsville	.....	.....	.26	5.68
Aurora	.....	.....	.11	3.89
Brownsville	.....	.....	1.47	60.53
Canby	.....	.....	.42	14.99
Coburg	.....	.....	.05	2.31
Cottage Grove	.....	.....	.42	15.12
Eugene	.....	.....	10.97	225.98
Forest Grove	.....	.....	1.43	64.75
Harrisburg	.....	.....	.09	3.26
Hillsboro	.....	.....	.07	4.91
Irving	.....	.....	.01	2.10
Jefferson	.....	.....	.02	2.60
Junction City	.....	.....	.20	7.29
Lebanon	.....	.....	.53	19.44
McMinnville	.....	.....	1.39	54.17
Monroe	.....	.....	1.08	35.44
North Yamhill	.....	.....	.10	1.97
Parker	.....	.....	.06	2.37
Sheridan	.....	.....	1.06	46.97
Silverton	.....	.....	2.44	105.01
Springfield	.....	.....	.02	2.60
Stayton	.....	.....	2.84	114.24
Turner	.....	.....	.06	1.95
West Stayton	.....	.....	.18	8.10
Woodburn	.....	.....	.13	4.37
Total	24.22	934.86	25.79	823.59
From Chicago and common points territory to—				
Albany	82.84	2,306.73	.....	.....
Corvallis	40.10	1,047.87	.....	.....
Dallas	5.19	180.57	.....	.....
Dayton	.96	41.23	.....	.....
Independence	3.85	184.92	.....	.....
Newburg	3.62	159.40	.....	.....
New Era	.09	4.81	.....	.....
Oregon City	23.36	985.41	.....	.....
Oswego	.58	23.76	.....	.....
Salem	81.61	2,409.84	.....	.....
Wheatland	.22	14.38	.....	.....
Willamette	.08	2.86	.....	.....
Wilsonville	.24	9.49	.....	.....
Airlie	.....	.....	.40	20.55
Amity	.....	.....	1.30	50.09
Aumsville	.....	.....	.49	17.93
Aurora	.....	.....	1.60	71.26
Ballston	.....	.....	.26	8.75
Beaverton	.....	.....	.14	9.54
Brooks	.....	.....	.81	31.73
Brownsville	.....	.....	.76	33.36

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	To points served by Willamette River boats		To points on S.P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
From Chicago and common points territory to—Continued.				
Canby			1.42	64.82
Carlton			.21	10.65
(4887) Chemawa			.04	4.60
Cornelius			.42	20.08
Cottage Grove			2.42	73.49
Dilley			.02	2.22
Dundee			.16	4.79
Eugene			11.66	426.93
Forest Grove			8.45	345.81
Gaston			.36	16.10
Gervais			.61	32.26
Goshen			.13	6.36
Halsey			.72	28.64
Harrisburg			1.48	64.47
Hillsboro			2.60	119.07
Hubbard			.05	4.95
Jefferson			.52	28.56
Junction City			.48	19.47
Lafayette			.21	11.34
Lebanon			7.49	264.08
McCoy			.46	23.11
McMinnville			25.87	861.95
Marion			.14	6.45
Mayfield			.47	15.68
Monitor			.29	11.20
Monmouth			.95	40.61
Monroe			.08	2.39
Mt. Angel			1.09	41.43
North Yamhill			.19	8.35
Parker			.26	10.30
Perrydale			.09	4.44
Plainview			.13	4.48
Pleasant Hill			.01	1.60
Reedsville			.19	8.59
Scio			.13	5.92
Shedds			.08	4.97
Sheridan			1.93	68.40
Sherwood			.43	25.48
Silverton			4.53	170.28
Springfield			.62	28.21
Stayton			1.10	50.89
Tangent			.05	2.22
Turner			.23	12.53
Waterloo			.21	11.97
West Scio			1.29	50.35
West Stayton			.74	36.85
Woodburn			2.82	92.98
Yamhill			.16	8.26
Total	242.74	7,371.27	89.75	3,401.79
From Cincinnati, Detroit and common points territory to—				
Albany	5.87	210.61		

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
From Cincinnati, Detroit, and common points territory to—Continued.				
Buena Vista	.08	4.01	.....	.....
Corvallis	1.65	53.89	.....	.....
Dallas	12.93	261.53	.....	.....
(4888) Dayton	.07	2.29	.....	.....
Independence	1.08	25.62	.....	.....
Newberg	5.29	214.15	.....	.....
New Era	.21	12.16	.....	.....
Oregon City	3.54	178.27	.....	.....
Salem	8.21	339.23	.....	.....
Wheatland	.36	11.06	.....	.....
Wilsonville	.01	1.95	.....	.....
Aumsville	.....	.....	.18	8.62
Aurora	.....	.....	.35	10.01
Benton	.....	.....	.08	2.28
Brownsville	.....	.....	.22	11.31
Canby	.....	.....	.16	5.22
Cornelius	.....	.....	.37	11.71
Cottage Grove	.....	.....	.08	3.60
Eugene	.....	.....	1.89	75.88
Forest Grove	.....	.....	.32	12.96
Gervais	.....	.....	.17	7.44
Harrisburg	.....	.....	.01	1.96
Hillsboro	.....	.....	.53	20.53
Hubbard	.....	.....	.20	12.87
Jefferson	.....	.....	.06	2.70
Junction City	.....	.....	.07	2.18
Lebanon	.....	.....	.32	8.36
McMinnville	.....	.....	33.39	488.94
Monmouth	.....	.....	.07	1.88
North Yamhill	.....	.....	.44	8.03
Perrydale	.....	.....	.06	3.07
Scio	.....	.....	.22	4.17
Shedds	.....	.....	.05	1.95
Sheridan	.....	.....	.18	8.35
Sherwood	.....	.....	.03	1.89
Silverton	.....	.....	.34	19.72
Stayton	.....	.....	.06	2.24
Sublimity	.....	.....	.14	3.41
Tangent	.....	.....	.96	45.01
West Stayton	.....	.....	.07	4.60
Woodburn	.....	.....	.53	15.87
Total	39.30	1,314.77	41.55	806.76
From Pittsburg, Buffalo, and common points territory to—				
Albany	3.51	111.01	.....	.....
Corvallis	2.33	48.61	.....	.....
Dallas	.11	4.17	.....	.....
Dayton	.05	2.71	.....	.....
Doves Landing	1.79	32.87	.....	.....
Independence	.30	9.44	.....	.....
Newburg	.05	1.83	.....	.....
Oregon City	2.04	185.80	.....	.....

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
From Pittsburg, Buffalo, and common points territory to—Continued.				
Salem	7.15	289.57	.....	.....
Wilsonville	.02	4.61	.....	.....
Amity	.....	.....	.15	2.84
Aumsville	.....	.....	.15	2.84
(4889) Brownsville	.....	.....	1.75	73.85
Canby	.....	.....	.13	2.61
Creswell	.....	.....	.23	4.40
Clackamas	.....	.....	.05	1.66
Dundee	.....	.....	.02	1.89
Eugene	.....	.....	1.82	56.83
Forest Grove	.....	.....	1.55	44.87
Gaston	.....	.....	.02	1.89
Gervais	.....	.....	.02	1.96
Hillsboro	.....	.....	.11	4.79
Hubbard	.....	.....	.10	2.83
Jefferson	.....	.....	.05	1.89
Lebanon	.....	.....	.82	23.26
McMinnville	.....	.....	.99	32.02
North Yamhill	.....	.....	.03	1.77
Scio	.....	.....	.19	3.57
Silverton	.....	.....	1.16	27.64
Stayton	.....	.....	.14	5.98
West Scio	.....	.....	.10	1.89
Woodburn	.....	.....	.22	5.13
Total	17.35	690.62	9.80	306.41
From New York, Boston, and common points territory to—				
Albany	23.76	736.98	.....	.....
Champoeg	.02	2.02	.....	.....
Corvallis	9.14	275.90	.....	.....
Dallas	2.50	83.37	.....	.....
Dayton	1.69	59.88	.....	.....
Independence	3.56	123.59	.....	.....
Newburg	.57	18.52	.....	.....
Oregon City	49.53	1,312.81	.....	.....
Oswego	.35	9.22	.....	.....
Salem	72.45	2,239.98	.....	.....
Wheatland	.06	3.34	.....	.....
Airlie	.....	.....	.08	3.27
Amity	.....	.....	.14	4.18
Aumsville	.....	.....	.19	6.77
Aurora	.....	.....	.65	23.22
Brownsville	.....	.....	1.32	39.64
Canby	.....	.....	.71	18.42
Chemawa	.....	.....	1.17	18.67
Coburg	.....	.....	.15	3.85
Creswell	.....	.....	.42	13.39
Cottage Grove	.....	.....	.31	14.56
Dundee	.....	.....	.61	10.38
Eugene	.....	.....	13.79	447.04
Forest Grove	.....	.....	7.07	244.44
Gaston	.....	.....	.15	4.73

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
From New York, Boston, and common points territory to—Continued.				
Harrisburg	.....	.....	1.19	41.14
Hillsboro	.....	.....	1.39	48.05
Hubbard	.....	.....	.28	7.62
Irving	.....	.....	.18	5.19
Jefferson	.....	.....	.27	8.83
(4890)				
Junction City	.....	.....	.60	24.48
Lafayette	.....	.....	.60	27.30
Lebanon	.....	.....	1.00	33.03
McCoy	.....	.....	.10	2.88
McMinnville	.....	.....	10.81	325.48
Marion	.....	.....	.02	1.68
Monroe	.....	.....	.77	23.79
Mt. Angel	.....	.....	.26	7.31
North Yamhill	.....	.....	.49	14.99
Perrydale	.....	.....	.71	20.51
Scio	.....	.....	.16	4.33
Sheridan	.....	.....	.71	22.90
Silverton	.....	.....	3.40	79.98
Springfield	.....	.....	.34	9.81
Stayton	.....	.....	.51	15.71
Sublimity	.....	.....	.22	7.28
Turner	.....	.....	.04	1.66
Waterloo	.....	.....	.05	2.74
Wellsburg	.....	.....	.06	1.58
West Scio	.....	.....	.24	8.99
West Stayton	.....	.....	.70	18.84
Whiteson	.....	.....	.04	1.79
Woodburn	.....	.....	1.37	42.16
Total	163.63	4,865.61	53.27	1,662.59
Grand Total	513.78	16,229.20	283.84	8,893.36

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor Union Pacific System and Southern Pacific Company.

I have prepared a like statement of freight traffic from points in the Willamette Valley, excluding Portland, via U. P. System, Portland and Granger, to eastern territories, for the fiscal year ending June 30, 1900, with the detail—compiled from the records of the Company, being Defendants' Exhibit 251, as follows:

(4891) DEFENDANTS' EXHIBIT 251.

(Stebbins)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Portland, Oregon, and Granger, Wyoming, to eastern territories, as specified below, for fiscal year ending June 30, 1900.

To—	Tons carried	U. P. System freight revenue
Missouri River and common points territory	21.96	$645.14
Mississippi River and common points territory	10.73	292.75
Chicago and common points territory	168.57	3,338.51
Cincinnati, Detroit, and common points territory	7.21	181.63
Buffalo, Pittsburg, and common points territory	9.02	200.94
Boston, New York, and common points territory	237.03	3,264.91
Total	454.52	7,923.88
From points served by Willamette River boats	327.91	5,787.05
From points on Southern Pacific lines not served by Willamette River boats	126.61	2,136.83
Total	454.52	7,923.88

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific Company and Southern Pacific Company.

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	From points served by Willamette River boats		From points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
To Missouri River and common points territory from—				
Beardsleys Landing	6.59	197.86		
Champoeg	.42	12.49		
Steamer Elmore	.15	6.50		
Fairfield	1.00	24.62		
Oregon City	5.57	171.44		
Rogers Landing	.10	4.65		
Salem	.88	47.34		
Marion			7.25	180.24
Total	14.71	464.90	7.25	180.24
To Mississippi River and common points territory from—				
Albany	1.57	47.81		
Dallas	.09	5.61		
Independence	6.73	148.67		
Oregon City	2.10	79.63		
Salem	.24	11.03		
Total	10.73	292.75		
(4892) To Chicago and common points territory from—				
Albany	14.15	392.20		
Buttesville	5.26	131.52		
Beardsleys Landing	1.03	26.93		
Dallas	28.38	494.06		
Fairfield	11.69	270.01		
Gearing Landing	.49	10.09		
Independence	14.77	250.80		
Oregon City	6.86	242.82		
Salem	14.23	266.77		
Wheatland	4.75	114.35		
Barlow			66.96	1,138.96
Total	101.61	2,199.55	66.96	1,138.96
To Cincinnati, Detroit and common points territory from—				
Buttesville	4.21	88.52		
Champoeg	.59	12.17		
Oregon City	2.22	71.23		
Salem	.19	9.71		
Total	7.21	181.63		
To Pittsburg, Buffalo, and common points territory from—				
Albany	.40	7.74		
Buttesville	5.10	93.67		
Independence	2.14	46.39		
Oregon City	.20	13.11		
Salem	1.18	40.03		
Total	9.02	200.94		

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, etc.—Continued.

	From points served by Willamette River boats		From points on S. P. Co. not served by Willamette River boats	
	Tons carried	U. P. Sys. freight revenue	Tons carried	U. P. Sys. freight revenue
To New York, Boston, and common points territory from—Continued.				
Albany	3.55	112.24	.....	.....
Buttesville	3.07	50.21	.....	.....
Champoeg	54.70	213.54	.....	.....
Dallas	21.54	393.73	.....	.....
Fairfield	51.59	678.57	.....	.....
Independence	4.66	91.44	.....	.....
McCley	6.72	126.66	.....	.....
Monroe	.86	18.26	.....	.....
Oregon City	15.11	333.43	.....	.....
Salem	16.61	331.62	.....	.....
Wheatland	6.22	97.58	.....	.....
Eugene	.....	.....	6.97	113.63
Hubbard	.....	.....	12.24	160.98
Lafayette	.....	.....	8.25	149.28
McMinnville	.....	.....	14.32	233.02
Silverton	.....	.....	10.62	160.72
Total	184.63	2,447.28	52.40	817.63
Grand Total	327.91	5,787.05	126.61	2,136.83

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor Union Pacific System and Southern Pacific Company.

(4893) I have a statement with detail of the freight traffic from points in the Willamette Valley, excluding Portland, via S. P., Pacific System, and Rio Grande Western Railroad, to the Missouri River and east, for the fiscal year ending June 30, 1900—compiled by the Freight Auditor of the D. & R. G., who is here. These papers, Defendants' Exhibit 252, are as follows:

DEFENDANTS' EXHIBIT 252.

(Stebbins)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company-Pacific System, and Rio Grande Western Ry. to Missouri River and east, for fiscal year ending June 30, 1900.

	Tons carried	S. P. Co. freight revenue
From points served by Willamette River boats	635.2	$6,186.10
From points on Southern Pacific lines not served by Willamette River boats	656.4	7,383.87
Total	1,291.6	13,569.97

NOTES.—1. Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

2. "From points served by Willamette River boats" includes 72.5 tons, $910.40, from Wheatland. It is not known whether this is Wheatland, Ore., or Wheatland, Calif.,; if the latter, it should not be included in this statement.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

(4894)

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company, etc.—Continued.

	From points served by Willamette River boats		From points on S. P. Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
Albany	68.4	625.44	.....	.....
Corvallis	115.5	728.51	.....	.....
Independence	86.7	812.96	.....	.....
Newburg	.2	4.09	.....	.....
Oregon City	.1	3.85	.....	.....
Salem	291.8	3,100.85	.....	.....
*Wheatland	72.5	910.40	.....	.....
Aumsville	.....	.....	2.0	23.91
Aurora	.....	.....	29.0	362.12
Ballston	.....	.....	.2	2.31
Barlow	.....	.....	.1	1.43
Brownsville	.....	.....	29.1	265.05
Brooks	.....	.....	15.2	188.70
Canby	.....	.....	.2	4.91
Cottage Grove	.....	.....	20.6	124.29
Creswell	.....	.....	6.3	98.51
Dallas	.....	.....	49.6	413.16
Derry	.....	.....	23.7	280.29
Dilley	.....	.....	.1	.86
Downs	.....	.....	8.7	98.94
Eugene	.....	.....	196.3	2,378.97
Forest Grove	.....	.....	1.6	26.71
Gervais	.....	.....	29.2	376.11
Goshen	.....	.....	.1	1.75
Harrisburg	.....	.....	12.2	146.24
Hillsboro	.....	.....	.4	15.50
Hubbard	.....	.....	14.1	174.68
Jefferson	.....	.....	7.4	101.71
Junction City	.....	.....	.2	8.32
Lafayette	.....	.....	.2	3.66
Lebanon	.....	.....	7.3	97.67
Macleay	.....	.....	16.8	207.00
McKee	.....	.....	2.2	19.82
McMinnville	.....	.....	5.9	101.23
Mt. Angel	.....	.....	8.5	112.32
North Yamhill	.....	.....	.6	22.04
Perrydale	.....	.....	4.4	41.85
Pratum	.....	.....	6.9	63.61
Saginaw	.....	.....	.3	11.77
Shaw	.....	.....	8.3	77.11
Sheridan	.....	.....	6.2	65.39
Sherwood	.....	.....	10.3	129.48
Silverton	.....	.....	23.9	301.96
Spicer	.....	.....	7.8	93.41
Simpson	.....	.....	6.9	51.70
Switzerland	.....	.....	23.6	241.71
Turner	.....	.....	.1	3.25
West Scio	.....	.....	43.0	333.73
Whiteson	.....	.....	8.0	91.37
Woodburn	.....	.....	18.9	219.32
	635.2	6,186.10	656.4	7,383.87

Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Company, etc.—Continued.

(4895)

NOTES.—1. Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

*It is not known whether this is Wheatland, Ore., or Wheatland, Calif. If the latter, it should not be included in this statement.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

I have a statement of the freight traffic to points in the Willamette Valley, excluding Portland, via Rio Grande Western Railroad and Southern Pacific Company, Pacific System, from the Missouri River and east, for the fiscal year ending June 30, 1900, with detail—prepared in the same way as the eastbound statement last introduced. These papers, marked Defendants' Exhibit 253, are as follows:

DEFENDANTS' EXHIBIT 253.

(Stebbins)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Ry. and Southern Pacific Company—Pacific System—from Missouri River and east, for fiscal year ending June 30, 1900.

	Tons carried	S. P. Co. freight revenue
To points served by Willamette River boats	206.1	$3,175.69
To points on Southern Pacific lines not served by Willamette River boats	192.0	2,839.46
Total	398.1	6,015.15

NOTE.—Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successors to the Rio Grande Western Ry. Co.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System, and Southern Pacific Company.

(4896)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Ry., etc.—Continued.

	To points served by Willamette River boats		To points on S. P. Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
Albany	120.7	$1,483.82		
Corvallis	12.0	249.99		
Dayton	.1	3.02		
Independence	12.8	212.82		
New Era	.1	3.40		
Newburg	1.3	34.42		
Oregon City	9.5	176.41		
Oswego	.1	1.32		
Salem	49.5	1,010.49		
Airlee			.2	$4.30
Amity			1.3	35.11
Aumsville			1.0	19.94
Aurora			.5	10.10
Ballston			.4	12.60
Brownsville			1.9	37.77
Canby			.9	19.53
Carlton			.3	5.69
Coburg			21.7	169.69
Cottage Grove			3.6	84.75
Creswell			.6	13.37
Dallas			6.1	131.88
Derry			.4	4.89
Dilley			.6	14.28
Dundee Junction				1.37
Eugene			74.3	720.81
Forest Grove			6.5	159.05
Gaston			.3	6.48
Gervais			.6	13.64
Goshen			.5	13.08
Halsey			2.3	69.65
Harrisburg			.6	10.93
Hillsboro			1.5	38.36
Hubbard			.5	13.94
Irving			.1	1.90
Jefferson			.2	6.49
Jefferson City			.4	9.28
Junction City			1.1	25.45
Lebanon			6.1	144.92
Macleay				1.32
Marion			.2	5.83
McKee			.1	1.84
McCoy				1.42
McMinnville			11.8	235.06
Monmouth			.7	15.28
Mt. Angel			4.0	100.80
North Yamhill			.6	17.06
Scio			.1	2.94
Shaw			.1	.99
Shedd			.5	13.50
Sheridan			1.1	31.17
Sherwood			.3	14.71
Silverton			2.9	75.85
Springfield			23.3	265.23

(4897)

Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Rio Grande Western Ry., etc.—Continued.

	From points served by Willamette River boats		From points on S. P. Co. not served by Willamette River boats	
	Tons carried	S. P. Co. freight revenue	Tons carried	S. P. Co. freight revenue
St. Mary's			.2	2.24
Surver				1.20
Tangent				1.47
Turner				4.28
West Scio			.2	3.16
West Stayton			1.1	27.45
Whitson			1.1	34.75
Woodburn			9.2	182.66
Total	206.1	3,175.69	192.0	2,839.46

NOTE.—Owing to destruction by fire of records of the Southern Pacific Co., this information was obtained from the records of the Denver & Rio Grande Railroad Co., successor to the Rio Grande Western Ry. Co.

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

I have a statement of freight traffic interchanged by U. P. and S. P. at Ogden Utah, having origin or destination on the line of the S. P. north of Ashland, Oregon, and south of Portland, Oregon, for the calendar year 1900. That statement was taken from a record in the office, of a statement furnished by the Freight Auditor to the General Freight Agent or Assistant General Freight Agent, some time during the year 1901, and the copy that we have of the statement—which was found within the last three weeks, gives only this information, without further detail except that the information was given for each month of the year, but we are not able to separate the traffic for the different points in Oregon, or for the different territories east of Ogden, and the use of the calendar year 1900 is due to the fact that the statement we found was for the calendar year. (4898) While the statement covers the territory between Ashland and Portland, exclusive of Portland, north of Ashland and south of Portland, I have not specified the points, as in the detail of the other statements, this being due to the paucity of information. This paper, marked Defendants' Exhibit 254, is as follows:

DEFENDANTS' EXHIBIT 254.

(Stebbins)

Statement of freight traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, having origin or destination on the line of Southern Pacific Company north of Ashland, Oregon, and south of Portland, Oregon, for the calendar year 1900.

	Tons carried	Union Pacific Railroad Company's freight revenue
Westbound	2,485	28,098.79
Eastbound	4,813	27,221.50
Total	7,298	55,320.29

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

I have a statement of the tonnage and revenue of the freight traffic between San Francisco and points in Oregon, Washington, Idaho and Montana, via S. P. and O. R. & N., for the year ending June 30, 1900, compiled from the records of the O. R. & N., and being Defendants' Exhibit 255, as follows:

(Stebbins)

Tonnage and revenue of freight traffic between San Francisco and points in Oregon, Washington, Idaho, and Montana, as specified below, via Southern Pacific Company and the Oregon Railroad and Navigation Company, for the year ending June 30, 1900.

Between San Francisco and—	Westbound			Eastbound			Total		
	Tons carried	O. R. & N. Co.'s freight revenue	S. P.Co.'s freight revenue	Tons carried	O. R. & N. Co.'s freight revenue	S. P.Co.'s freight revenue	Tons carried	O. R. & N. Co.'s freight revenue	S. P. Co.'s freight revenue
1. Spokane proper	12	153 01	70 55	339	4,619 26	2,050 63	351	4,772 27	2,121 18
2. Pendleton, Athena, Walla Walla, Wallula, Waitsburg, Huntsville, Longs, Dayton, Lewiston, Pullman, Moscow, Connell, Garfield, and Farmington	47	332 83	245 21	113	1,912 75	893 12	160	2,245 58	1,138 33
3. Harrison, Burke, Mullan, and points between				167	6,965 37	2,688 90	167	6,965 37	2,688 90
4. Great Northern Idaho Points via Spokane					5 09	1 99		5 09	1 99
5. Great Northern Montana points via Spokane	4	47 60	22 34	146	1,830 90	1,016 94	150	1,878 50	1,039 28
6. Northern Pacific Idaho points via Wallula					1 45	2 61		1 45	2 61
7. Northern Pacific Montana points via Wallula									
Total	63	533 44	338 10	765	15,334 82	6,654 19	828	15,868 26	6,992 29

	Total tons carried	Gross operating revenue	
Total tons of freight carried by and gross operating revenue of Union Pacific System for year ending June 30, 1900 (see Note 1)	7,380,796	39,147,697 33	
Ratio of freight traffic between San Francisco and points specified above to total tons of freight carried by and gross operating revenue of Union Pacific System	0 01%	0 04%	
Total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines for year ending June 30, 1900 (See Note 2)	11,631,575		63,920,414 22
Ratio of freight traffic between San Francisco and points specified above to total tons of freight carried by and gross operating revenue of Southern Pacific Company Lines	0 01%		0 01%

NOTES.—1. Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad and Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

2. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross revenue is correct.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

(4900) I have a statement of the tonnage and revenue of freight traffic between San Francisco and Montana common points via S. P. and O. S. L., for the year ending June 30, 1900, compiled from the records of the O. S. L. Company. Owing to the destruction of the headquarters of the O. S. L. in 1901, it was necessary to compile this statement from the passing reports of Ogden station, and the information may be slightly incorrect in that it does not reflect the final revision of the waybills at destination. The statement gives the amount of the waybills as they were when they passed Ogden station in either direction. The passing statements base on the waybills, which are revised at destination and again in the general office. Mr. McNitt of the O. S. L. furnishes the information for this statement, which is marked Defendants' Exhibit 256, as follows:

DEFENDANTS' EXHIBIT 256.

(Stebbins)

Tonnage and revenue of freight traffic between San Francisco and Montana common points via Southern Pacific Company and Oregon Short Line Railroad Company for year ending June 30, 1900.

Between San Francisco and—	Westbound			Eastbound			Total		
	Tons carried	O. S. L. R. R. Co.'s freight revenue	S. P. Co.'s freight revenue	Tons carried	O. S. L. R. R. Co.'s freight revenue	S. P. Co.'s freight revenue	Tons carried	O. S. L. R. R. Co.'s freight revenue	S. P. Co.'s freight revenue
Butte	227	$2,005.31	$2,521.36	1,822	$20,829.81	$26,221.08	2,049	$22,835.12	$28,742.44
Silver Bow				28	231.45	291.02	28	231.45	291.02
Anaconda	53	251.93	397.53	222	2,400.32	3,787.46	275	2,652.25	4,184.99
Helena	19	134.59	217.65	513	5,216.61	8,315.57	532	5,351.20	8,533.22
Other Points				94	757.04	1,196.11	94	757.04	1,196.11
Total	299	2,391.83	3,136.54	2,679	29,435.23	39,811.24	2,978	31,827.06	42,947.78

	Total tons carried	Gross operating revenue	
Total tons of freight carried by, and gross operating revenue of Union Pacific System for year ending June 30, 1900 (see Note 1)	7,380,796	$39,147,697.33	
Ratio of freight traffic between San Francisco and Montana common points specified to total tons of freight carried by, and gross operating revenue of, Union Pacific System	0.04%	0.08%	
Total tons of freight carried by, and gross operating revenue of Southern Pacific Company Lines for year ending June 30, 1900 (see Note 2)	11,631,575		63,220,414.22
Ratio of freight traffic between San Francisco and Montana common points specified to total tons of freight carried by, and gross operating revenue of Southern Pacific Company Lines	0.03%		0.07%

NOTES.—1. Union Pacific System includes Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the rail and water lines of the Oregon Railroad and Navigation Company. Owing to the destruction of certain records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

2. Southern Pacific Company Lines include the Southern Pacific Company-Pacific System and the lines east of El Paso in which the Southern Pacific Company has an interest, including the Sunset-Central Lines (so-called) and the Southern Pacific Company's Atlantic Steamship Lines. Owing to the destruction of records by fire, the total tons carried have been partially approximated. The gross operating revenue is correct.

3. Owing to destruction by fire of the records of the Southern Pacific Company and of other records of the Oregon Short Line Railroad Company, this statement was compiled from the passing reports of Ogden, Utah, station. The figures are, therefore approximated, as they may not correspond to the waybills as finally revised before settlement.

Compiled by:

(Sgd) C. S. STEBBINS,

Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

(4902) I prepared a statement for a month in 1906 and a month in 1907, at the request of Mr. Severance, and I was called upon for some information in respect to 1900 or 1901. I have found data upon which to prepare a statement of the freight traffic interchanged by the U. P. and the S. P. at Ogden for the years ending June 30, 1900, and 1901, and prepared the statement. The data consisted of a record of the tonnage interchanged and the U. P. revenue thereon, at various junction points in 1900 and 1901. The statement gives the tonnage interchanged at Ogden with the S. P. for the two years, and the U. P.'s revenue thereon, and covers all traffic interchanged by the two companies at Ogden. The statement from which I was able to get this information was in the records of the Accounting Department at Omaha. This statement covers all traffic interchanged at Ogden, regardless of point of origin or destination. It includes traffic from and to local points on the U. P. and local points on the S. P.—not meaning traffic originating and terminating at a local point on the U. P., but traffic interchanged at Ogden between the two companies. The statement was prepared by the Freight Auditor of the U. P., it was a form of statement which was regularly prepared at that time, and this copy happened to be a copy that was retained in the general office or in the Freight Auditor's office, and was not in the record room where the fires occurred. I got access to this copy within the last three weeks. (4903) This paper, marked Defendants' Exhibit 257, is as follows:

DEFENDANTS' EXHIBIT 257.

(Stebbins)

Statement of freight traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, for the years ending June 30, 1900 and 1901.

Year	Tons carried	Union Pacific R. R. Company's revenue
1900	588,510	3,933,555 62
1901	583,701	4,175,183 52

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

I have made a statement of the passenger traffic interchanged likewise at Ogden for 1900 or 1901, compiled from the records of the Company—for the year ending June 30, 1901—but owing to the partial destruction of records it was necessary to estimate a portion of the traffic for four months. As far as the reports of the U. P.'s own agents are concerned, the statement is actual for eleven months, and estimated for one month. For the reports of tickets sold by foreign roads over the U. P. the statement is actual for nine

months, and a portion of the traffic is estimated for the other three months. The estimate in each case is the most intelligent approximation we could make based on the business furnished by the same roads during other months of the year, and the business furnished by other roads during the same three months. As to three months in one instance, and one month in another instance, we resorted to approximation on account of the destruction of the records by fire. The statement, Defendants' Exhibit 258, is as follows:

(4904)

DEFENDANTS' EXHIBIT 258.

(Stebbins.)

Statement of passenger traffic interchanged by Union Pacific Railroad Company and Southern Pacific Company at Ogden, Utah, for the year ending June 30, 1901.

Passengers carried 53,132
Union Pacific Railroad Company's revenue.....$1,007,785.18

NOTE.—Owing to the destruction of records by fire, the passenger traffic is partially approximated for four months.

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

That statement covers all traffic interchanged by the U. P. and S. P. at Ogden—from or to local points on the U. P. as well as through traffic from or to the Missouri River and east. I have a classified statement of U. P. System revenue from operations for the fiscal years ending June 30, 1900, to and including June 30, 1909, compiled from the records of the companies. As to the freight revenue, shown for 1901, for the U. P. System, there is a difference of about $75,000 between the amount shown and the amount given in my former testimony, page 4585 of the record. This difference represents the freight revenue of some auxiliary lines of the U. P. System, especially of the O. S. L., which at that time were not leased by the O. S. L. They were not really a part of the system. The figures shown in the present statement correspond to the annual reports of the Company and to the figures reported to the Interstate Commerce Commission. This statement, marked Defendants' Exhibit 259, is as follows:

(4905)

DEFENDANTS' EXHIBIT 259.

(Stebbins.)

Statement of Revenue from Operations for each fiscal year ending June 30, 1900, to 1909, inclusive.

1900.

	U. P. R. R. Co.	O. S. L. R. R. Co.	O. R. & N. Co.	U. P. System
Freight revenue	16,504,304 87	6,372,318 73	5,444,392 46	28,321,016 06
Passenger revenue	4,034,945 66	1,714,992 89	1,688,345 43	7,438,283 98
Mail, express and other revenues from operations	2,507,656 80	491,085 73	389,654 76	3,388,397 29
Total revenues from operations	23,046,907 33	8,578,397 35	7,522,392 65	39,147,697 33

1901.

Freight revenue	18,462,554 34	7,251,208 34	6,312,029 94	32,025,792 62
Passenger revenue	4,410,333 65	1,924,238 18	1,719,126 00	8,053,697 83
Mail, express and other revenues from operations	2,599,712 21	497,833 01	361,145 34	3,458,690 56
Total revenues from operations	25,472,600 20	9,673,279 53	8,392,301 28	43,538,181 01

1902.

Freight revenue	19,452,978 42	8,476,337 42	6,700,717 47	34,630,033 31
Passenger revenue	4,957,245 69	2,281,610 47	1,933,860 73	9,172,716 89
Mail, express and other revenues from operations	2,725,903 89	554,345 29	417,280 12	3,697,529 30
Total revenues from operations	27,136,128 00	11,312,293 18	9,051,858 32	47,500,279 50

1903.

Freight revenue	20,418,411 92	8,680,763 77	7,142,068 35	36,241,247 04
Passenger revenue	5,141,472 61	2,248,240 17	2,346,937 21	9,736,649 99
Mail, express and other revenues from operations	3,042,827 79	608,546 19	487,682 61	4,139,056 59
Total revenues from operations	28,602,715 32	11,537,550 13	9,976,688 17	50,116,953 62

1904.

Freight revenue	24,267,848 74	8,913,777 05	7,008,091 25	40,189,717 04
Passenger revenue	5,830,582 18	2,447,100 57	2,476,327 28	10,754,010 03
Mail, express and other revenues from operations	3,140,838 33	690,068 82	504,596 45	4,335,503 60
Total revenues from operations	33,239,269 25	12,050,946 44	9,989,014 98	55,279,230 67

1905.

Freight revenue	25,736,780 06	9,992,750 60	7,633,397 61	43,362,928 27
Passenger revenue	6,203,393 01	2,674,932 07	2,606,297 00	11,484,622 08
Mail, express and other revenues from operations	3,234,951 46	688,886 61	553,560 24	4,477,398 31
Total revenues from operations	35,175,124 53	13,356,569 28	10,793,254 85	59,324,948 66

(4906)

Statement of Revenue from Operations for each fiscal year ending June 30, 1900, to 1909, inclusive—Continued.

1906.

	U. P. R. R. Co.	O. S. L. R. R. Co.	O. R. & N. Co.	U. P. System
Freight revenue	29,517,907.11	11,295,911.54	8,454,173.24	49,267,991.89
Passenger revenue	6,921,953.42	3,174,461.37	3,240,088.78	13,336,503.57
Mail, express and other revenues from operations	3,356,009.97	699,703.25	621,333.92	4,677,047.14
Total revenues from operations	39,795,870.50	15,170,076.16	12,315,595.94	67,281,542.60

1907.

Freight revenue	33,059,596.25	12,853,101.26	9,148,082.80	55,060,780.31
Passenger revenue	8,254,809.24	3,420,953.32	3,323,988.28	14,999,750.84
Mail, express and other revenues from operations	4,198,528.05	922,064.13	859,603.32	5,980,195.50
Total revenues from operations	45,512,933.54	17,196,118.71	13,331,674.40	76,040,726.65

1908.

Freight revenue	31,644,925.44	11,403,509.85	10,040,383.94	53,088,909.23
Passenger revenue	9,089,888.87	3,908,117.74	3,720,866.99	16,718,873.60
Mail, express and other revenues from operations	4,203,376.82	1,106,620.98	921,444.28	6,231,442.08
Total revenues from operations	44,938,191.13	16,418,338.57	14,682,695.21	76,039,224.91

1909.

Freight revenue	32,960,899.52	12,591,282.05	8,622,145.67	54,174,127.24
Passenger revenue	9,880,650.98	4,202,118.25	3,511,926.47	17,603,695.70
Mail, express and other revenues from operations	4,859,911.89	1,194,868.45	917,858.27	6,972,638.61
Total revenues from operations	47,710,262.39	17,988,268.75	13,051,930.41	78,750,461.55

Compiled by:

(Sgd) C. S. STEBBINS,
Assistant to General Auditor, Union Pacific System and Southern Pacific Company.

I have a similar statement compiled from the records of the Company for the S. P., Defendants' Exhibit 260, as follows:

(4907)

DEFENDANTS' EXHIBIT 260.

(Stebbins.)

Southern Pacific Company lines.

Statement of revenues from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.

1900.

Freight revenue	$42,851,952.62
Passenger revenue	15,897,557.44
Mail, express and other revenues from operations	5,170,904.16
Total revenues from operations	63,920,414.22

Statement of Revenue from Operations for each fiscal year ending June 30, 1900, to 1909, inclusive.—Continued.

1901.	
Freight revenue	a$54,251,584.64
Passenger revenue	18,903,036.08
Mail, express and other revenues from operations	4,090,277.46
Total revenues from operations	77,244,898.18
1902.	
Freight revenue	$57,082,415.26
Passenger revenue	21,872,917.10
Mail, express and other revenues from operations	4,588,489.14
Total revenues from operations	83,543,821.50
1903.	
Freight revenue	$59,313,412.19
Passenger revenue	28,748,273.62
Mail, express and other revenues from operations	5,258,649.42
Total revenues from operations	88,320,335.23
1904.	
Freight revenue	$62,008,031.46
Passenger revenue	25,436,076.07
Mail, express and other revenues from operations	5,489,123.20
Total revenues from operations	92,933,230.73
1905.	
Freight revenue	$63,115,442.30
Passenger revenue	26,697,373.32
Mail, express and other revenues from operations	5,702,342.39
Total revenues from operations	95,515,158.01
1906.	
Freight revenue	$69,663,056.51
Passenger revenue	29,441,727.35
Mail, express and other revenues from operations	6,527,765.66
Total revenues from operations	105,632,549.52

(4908)

1907.	
Freight revenue	$82,901,982.92
Passenger revenue	33,966,491.11
Mail, express and other revenues from operations	8,074,323.67
Total revenues from operations	124,942,797.70
1908.	
Freight revenue	$76,966,648.80
Passenger revenue	36,137,416.25
Mail, express and other revenues from operations	10,172,855.72
Total revenues from operations	123,276,920.77
1909.	
Freight revenue	$75,467,931.94
Passenger revenue	34,825,163.13
Mail, express and other revenues from operations	10,228,813.67
Total revenues from operations	120,521,908.74

a Includes all revenues of Cromwell Steamship Company.

Compiled by:

(Sgd) C. S. STEBBINS.
Assistant to General Auditor,
Union Pacific System and Southern Pacific Company.

(4908) Prior to December 31, 1903, the S. P. included in its freight revenue low charges, two mills per ton per mile, on material carried for the use of the Company itself. Since that time this has not been done except in the case of material carried for construction, in which case the freight charges assessed go into the cost of the property. Exhibit 260 covers all the S. P. lines including the revenue of the Texas lines.

(TESTIMONY RESUMED, NEW YORK CITY, WEDNESDAY, MARCH 30, 1910.)

(4909) The figures in Defendants' Exhibit 249, showing a very small amount of business eastbound from the Orient, were taken from the figures in the New Orleans office. Defendants' Exhibit 250, freight traffic to points in the Willamette Valley, excluding Portland, via the U. P. and Granger, we got from the records of the O. R. & N. Company at Portland. We put in a partial statement of the Willamette Valley traffic, taken from those records at the last hearing, not being asked for this particular one. I am satisfied as to the correctness of these figures. Referring to Defendants' Exhibit 251, the Willamette Valley covers territory south of Portland as far as Divide Station on the S. P., the summit of the watershed between the Willamette Valley and the river south, Rogue River I think. Where I say on these exhibits "From points on Southern Pacific lines not served by Willamette River Boats," I mean inland points on the S. P. (4910) "Q. You do not by that mean to imply that these stations on the Southern Pacific may not be so located, with reference to stations or towns on the river, that agricultural products, such as hops and things of that character, raised in between, might go to either place? You know nothing about that, do you? A. No. Q. You merely mean common stations? A. Classified as points served by Willamette River boats, all points from which the boats actually receive business, or to which the boats actually deliver business; and also any points that were stated by Mr. Miller, the traffic manager of the O. R. & N. Company and the general freight agent of the Southern Pacific lines in Oregon, could be reached by the Willamette River boats." And the ones that are designated as "Points on the S. P. not served by Willamette River boats," are inland points, and I do not, of course, in this consider as to whether or not traffic might be hauled in from the country to the river or to the station, but merely take the points that are not reached by the river boats. These points to which attention has been called are separated, as indicated in the testimony of Mr. Miller.

Referring to Defendants' Exhibit 254, we have no means of determining now as to the amount of that traffic that was delivered at points, or originated at points, south of Portland and north of Ashland, which were served by the boats as well as the rail lines. The statement gives absolutely all the information we have concern-

ing the traffic mentioned in it, except that the original statement from which this was compiled gave the traffic for each month of the year separately. Defendants' Exhibit 257—freight interchanged by the U. P. and S. P. at Ogden, for the years ending June 30, 1900 and 1901, covers all traffic interchanged there, without reference to the point of origin or its destination. (4911) It might originate on the U. P. destined to some point on the S. P., or originate on the S. P., destined to some point on the U. P. west of the Missouri River—might be taken up at Denver by the U. P., or brought from the River, and delivered to the S. P. at Ogden. We have the detailed information concerning the passenger traffic interchanged at Ogden for the year ending June 30, 1901, Defendants' Exhibit 258, and could give the origin and destination of each item except the estimated portion, but it would be quite a task to compile it. The traffic is local and through. The figures in Defendants' Exhibit 259 correspond to the annual reports to the stockholders and to the Interstate Commerce Commission.

(4912) The figures on Defendants' Exhibit 260 include the Texas lines and are taken from the annual reports of the S. P. They do not include the S. P. of Mexico or some lines in Arizona in which the S. P. is interested, but which have never been treated as a part of the system—they have been shown separately. It does not include Pacific Mail, or the earnings from the street railway in Los Angeles, or the Utah Light & Power Company. The net receipts from those other companies would appear in the income account of the S. P. Company. I am not sure whether this Utah company is an S. P. or a U. P. proposition.

(4913) WILLIAM DAVID LINCOLN (2) Lincoln.

Defendants' Exhibit 261 was prepared in my office under my instruction. It is a memorandum statement showing the average miles per car per day on the several lines, mostly western lines. The information was obtained from the statistical bulletin issued by the Chairman of the Committee on Relations between Railroads of the American Railway Association. The first statement made up by the Committee included January, February and March in one item. They started to make up a statement for every three months, and then changed it to a monthly statement. This exhibit is as follows:

DEFENDANTS' EXHIBIT 261.

(Lincoln)

Average mile per car, per day, on following lines.

(Taken from statistical bulletin prepared by chairman of committee on relations between railroads, American Railway Association.)

Month	Un. Pac.	A. T. & S. F.	Gt. Nor.	Nor. Pac.	Can. Pac.	Tex. Pac.	C. R. I. & P.	D. & R. G.
1907.								
January.								
February.	44.4	26.9	.....	17.6	.....	21.8	26.1	16.5
March.								
April	43.6	29.1	.....	24.5	.....	23.0	27.4	15.4
May.	48.7	30.0	.....	26.6	27.6	21.5	28.4	16.7
June.	54.3	28.9	.....	27.1	26.9	24.8	25.2	17.2
July.	40.9	25.0	27.4	27.6	26.0	23.5	24.2	16.6
August	41.4	24.5	30.3	25.4	28.1	26.7	21.8	15.4
September	38.7	26.5	30.3	24.5	25.6	26.4	22.7	14.7
October	36.7	25.5	30.6	24.5	30.3	22.3	22.3	14.4
November.	36.5	24.2	27.0	25.3	35.9	21.2	23.0	14.3
December.	33.6	23.4	19.0	21.4	27.2	21.1	21.9	13.4
(4914)								
1908.								
January.	36.5	25.3	12.6	17.2	25.1	20.7	21.3	12.8
February	34.5	25.3	14.0	18.1	22.4	20.6	22.4	12.5
March	38.6	26.5	15.4	19.1	29.1	21.1	23.6	12.1
April	41.1	25.4	17.1	21.0	25.1	19.2	22.5	13.7
May.	37.8	23.2	17.4	20.9	21.6	19.2	19.3	13.7
June	39.5	20.6	17.3	14.9	22.8	19.8	19.7	14.4
July.	41.8	22.0	19.9	21.7	25.1	21.5	22.5	14.3
August.	49.3	25.2	22.0	24.0	22.5	23.7	22.6	14.1
September.	48.7	30.0	29.7	25.8	25.7	24.3	23.1	15.8
October	46.8	30.2	29.1	25.6	32.2	25.0	25.9	15.6
November.	45.8	31.7	26.9	21.5	37.0	26.8	23.8	15.6
December	41.8	28.2	17.8	21.5	31.9	30.3	22.8	13.5
1909								
January.	34.5	24.9	17.1	16.2	24.2	25.6	22.1	13.1
February.	33.7	29.1	20.8	20.5	27.1	23.6	24.3	11.2
March	38.2	30.8	17.6	20.7	30.0	27.6	24.9	14.6
April	37.0	27.7	17.9	22.6	26.1	28.0	24.6	15.6
May.	36.7	30.5	22.3	24.2	25.4	24.4	24.8	16.2
June.	37.1	26.1	23.5	24.5	24.7	22.3	25.3	17.5
July.	40.2	23.0	23.6	22.9	24.8	20.0	25.9	15.2
August	47.1	27.6	25.1	23.9	25.9	23.4	26.7	13.8

W. D. LINCOLN.
Supt. Trans.

OMAHA, *March* 22, 1910.

The information as to the figures themselves is furnished by the railroads to the chairman, and the average is figured out by the Committee, Mr. Hale being in charge of the office. (4915) The greatest fluctuation is around January, February and March of 1908; after the panic in the fall of 1907, business all over the country was very quiet, slight movement of cars. There was very light business movement February, 1909; it would be density of traffic, and no doubt weather conditions on our line; the others rather hold

Greatest fluctuation.

their own. This exhibit shows the average number of miles by each car per day, and that the U. P. gets a larger mileage out of the cars it uses for each day than other lines in the same territory. It signifies that we get better movement out of our cars, and no doubt more economical operation. Our schedule on the freight train from Omaha to Ogden may show up slower than other lines, but, as I said before, all the freight is moved on a better schedule than most of the other lines. The statement shows that the cars make better mileage per day than the other lines; there are not so many cars lying around.

U. P. gets best results.

(4916) The cars handled by the U. P. make more miles per day than by the other transcontinental lines. I don't know what the other lines are doing. From the comparison—I know what we are doing—it shows that the U. P. are getting more mileage out of the cars on their lines per day than any other line—that they are moving their general line of freight, all the freight, faster than the other lines. (4917) We run the Colorado freight a little faster than the California freight. That freight is included in the totals, as is the movement of local trains carrying local business in Nebraska, wholesaled out of Omaha, Kansas City and Kansas. We take the whole movement of all the cars. In May and June, 1909, the average is shown to be less than in September and August, 1908, on account of the heavy movement of stock in September, and fruit in the fall months. As to the character of the traffic—one line moving some low-class commodity, another line moving fruit or livestock—it would depend upon the distance traveled by the freight; the speed would be a very small factor.

U. P. can make more miles per day than other lines.

(4918) EUGENE S. IVES.

Ives.

I am General Counsel for the S. P. properties in Arizona, as represented and managed by Mr. Randolph. In 1901, not beginning later than 1902, those lines in Arizona were the "Gila Valley, Globe & Northern, the Maricopa & Phoenix; and the Arizona & Colorado was organized a little prior to that time; and the Cananea, Yaqui River & Pacific was in Mexico—terminals in Naco, Arizona, just this side of the international line." The termini of the Maricopa & Phoenix were Phoenix on the north, and Maricopa, which is on the main line of the S. P., on the south. Mesa is 10 or 12 miles to the southeast of Phoenix, perhaps it is 17; my impression is it is not more than 10 or 12. The Maricopa & Phoenix went to Mesa from Tempe, on the line of that road, and about 10 miles south of Phoenix. Maricopa is on the main line of the S. P. about 35 miles south of Phoenix. The rail line from Maricopa passing through Tempe on the way to Phoenix, and the rail line goes from Tempe over to Mesa.

Attorney for S. P. in Arizona.

S. P. lines in Arizona.

(4919) The Gila Valley, Globe & Northern goes from Bowie on the main line of the S. P., in a general northwesterly direction, to Globe, which is its terminus. My relations with these properties

Phoenix & Eastern.

began in 1901 or the early part of 1902, when the Southern Pacific acquired the Cananea & Yaqui River Railroad from the Greene Consolidated Copper Company. I recall the railroad construction referred to in Mr. Murphy's testimony, from Phoenix east as far as Florence and from Florence beyond still farther east, under the name of the Phoenix & Eastern. It began in the summer or fall of 1902, and proceeded some few miles beyond Florence, altogether some 70 odd miles from Phoenix. In 1903 or 1904 construction was pushed farther east beyond Florence, the ultimate point east being Dudleyville, Pinal County, Arizona, at the conflux of the Gila and San Pedro Rivers. During the construction of the Phoenix & Eastern, or prior thereto, it was contemplated by the Harriman interests, acting through Randolph and myself in Arizona, that, including the line from Tempe to Mesa, we should build beyond and to the East.

Line from Mesa east, contemplated by S. P.

It would extend through Gila River canyon.

(4920) "It was contemplated that a line should be constructed from Mesa through in a general northeasterly direction, through Arizona and New Mexico to Durango, Colorado. The line of that road would run from Mesa to Florence, and from Florence, along the Gila River, to Dudleyville, or to a point on the Gila River, on the north side of the Gila River, opposite Dudleyville, and thence in a northeasterly direction through a canyon known as Box Canyon, or the Gila River Canyon, which is recognized as the only right of way through that mountain range, and from that point on to, as I say, and through New Mexico, up to Durango, the coalfields. On going through the Box Canyon it touches San Carlos, which is about at the easterly mouth of this canyon, which is on the main line of the Gila Valley, Globe & Northern Railroad; and that portion of the line from Mesa or Phoenix to San Carlos was designed to be available both for this contemplated line to Durango and via the Gila Valley, Globe & Northern to Bowie for a low grade transcontinental line to the Southern Pacific."

San Carlos.

Low grade line.

Bowie is in Cochise County, Arizona. "It had been in the contemplation of Mr. Randolph for a number of years prior thereto, when he was superintendent of the El Paso division of the Southern Pacific road, from El Paso to Yuma. That was as far back as 1897 or 1898, anyhow. I do not know whether the line to Durango was in contemplation by him at that time or not. * * * But that canyon as *the* best right of way for a transcontinental line was in his mind at that time. * * * The articles of incorporation of the Phoenix & Eastern Railroad, as I ascertained prior to the institution of this litigation, provided for the construction of a road from Phoenix to Florence and along the Gila River to Dudleyville, which, as I have said, is the (4921) conflux between the Gila River and the San Pedro River, and thence in a southeasterly direction along the San Pedro River to Benson. The Phoenix & Eastern Railroad Company, under the general railway law of 1875, filed its map of definite location for such a line of railroad, going along the south side of the Gila River from a point east of Florence to Dudleyville

P. & E. map showed line to Benson and Dudleyville.

and thence along the westerly side of the San Pedro River down to Benson. * * *

"It is my intention to state this as explanatory of the litigation, and not as proof of the map. This right of way was approved by the Secretary of the Interior, in October, 1902, and the Phoenix & Eastern continued its construction along such right of way. We knew of this construction, and interposed no obstacles or objection of any kind to it. In December, 1903, the grading force of the Phoenix & Eastern having at that time reached a point between Florence and a place called Kelvin, on the south side of the Gila River, about two miles west of Kelvin, commenced to throw a bridge across the Gila River from the south side to the north side, departing from its right of way, and when that fact was called to our attention we recognized that a line of railroad by the Phoenix & Eastern on the north side of the Gila River would pre-empt the approach to the Gila Canyon. * * * As I say, when the Phoenix & Eastern moved across to the north side of the Gila River, we recognized that a line on the north side of the Gila River would encroach for right of way purposes upon territory which it was in our contemplation to use for this line with respect to which I have testified; and we thereupon at once organized the Arizona Eastern Railroad Company, with a charter right to construct a railroad through that territory, and commenced a survey, beginning from the east at San Carlos, through the Gila Canyon, down toward Florence. We proceeded and filed our maps through the Gila Canyon before they had—well, they had not made (4922) any survey through the Gila Canyon, but they were surveying a strip of territory on the north side of the river, about 16 or 18 miles in length, from this point some two miles west of Kelvin to Dudleyville. We then continued our survey, having surveyed through the canyon and filed our maps covering the right of way through the canyon,—we continued our survey from Dudleyville on to Kelvin, our survey covering the same territory which they were surveying, and both surveying parties working with the utmost despatch, each aware of the fact that the other was endeavoring to secure this same territory, under the general railroad act.

No objection to line to Benson.

Change of line of P. & E.

Encroached upon line S. P. intended to use.

Filed maps through Gila Canyon, first

"Q. Was that the time the rocks fell, that Bro. Severance asked Mr. Murphy about? A. No; the rocks fell, I think, a trifle after that. The surveying parties did not do any blasting. But the two maps were filed by the two companies, on the same day—our map was filed two hours ahead of theirs—and then the litigation commenced. In the meantime our railroad, following its right of way, commenced to construct from the east westward; and they, following the line which they had already built, from Phoenix to Florence and beyond, were constructing from the west eastward, and at various points along the rights of way claimed by both of us. Our line was some 15 or 20 feet in altitude over their line, but both lines were within the limit of 200 feet allowed for right of way purposes by the act of Congress. Now, on that there were several places where there was considerable rock to be blasted—in fact, there was

Litigation commenced.

Falling rocks.

rock to be blasted all along it, practically all along it, but at some places more than others; and each side, anxious to construct and fortify itself by construction, in the inevitable contest in the courts and before the Secretary of the Interior, threw its grading parties out in advance of their regular work toward these rocky points, and at one time both of us were working at the same rocky point, and I believe that when they blasted some of their rock would reach our right of way, and when we blasted some of our rock reached their right of way. * * *

"When we met at that point in this way, we both appealed to the courts; both actions were commenced separately, each asked for preliminary injunction, and the court granted a preliminary injunction directing that each party should proceed in its grading at the place where the camp regularly was, so as not to interfere with the other, and we retired from this rocky point and they retired from the rocky point. We went back to the end of our completed grade line on the east and they to theirs on the west, and each continued to construct, they eastwardly and we westwardly, until we met, and when we met, the force of that injunction order had of course lapsed, and they appealed to the courts and we fought out another temporary injunction, and they were granted a tempo- (4923) rary injunction restraining us from building any farther, under the protection of which they proceeded and tore up our old graded line, wherever it was necessary to tear it up in the construction of their own, and constructed a line over the disputed territory. * * * Being this 18 miles on the north side of the Gila River between Dudleyville on the east and a point two miles west of Kelvin on the west.

Injunctions.

"Then the case came to trial, while they were completing their construction work, and upon the trial we prevailed and obtained a judgment perpetually enjoining them from building or interfering with us on any portion of this disputed territory. From that they appealed to the Supreme Court of the Territory of Arizona, and the Supreme Court reversed the judgment on the ground that the courts had no jurisdiction over the permanent rights of either party pending the contest before the Land Department, such contest having been undetermined at the time of the trial of the suit. So that the judgment was reversed, and the court held that it had jurisdiction to adjudicate only the temporary rights of the respective parties to the territory pending the determination of the contest before the Land Department; and in view of the fact that they had a constructed railroad at the time the Supreme Court rendered the determination, they were given a temporary injunction in this judgment. * * * From that we appealed to the Supreme Court of the United States, and that appeal was perfected and docketed in the Supreme Court and pending at the time of the contracts which resulted in the acquisition of the Phoenix & Eastern by the Southern Pacific people, and the appeal was dismissed. * * *

S. P. prevailed.

Judgment reversed, no jurisdiction.

Appeal to U. S. Supreme Court.

"When the Phoenix & Eastern filed their map on the same day that we filed ours, or definitely located this 18 miles of territory on the north side of the river, attached to their map was a relinquishment, or a document in the nature of relinquishment, whereby they relinquished their right of way acquired in October, 1902, to the corresponding 18 miles on the south side of the Gila River, such relinquishment, however, by its terms being effective only upon the approval of the map filed by them on the 14th of March, of amended location. We contended that inasmuch as it was recognized that a railroad company cannot have two rights of way (4924) and inasmuch as this relinquishment was conditional at the time we filed it, that at the time they filed theirs and therefore at the time we filed ours, they actually had a right of way on the south side of the river and therefore could not initiate a right of way on the north side of the river, and that therefore our right of way was superior." That contention was one in which we had great confidence, and their lawyers expressed themselves as having grave apprehensions of that position. The articles of incorporation of the Phoenix & Eastern contemplated Benson as the terminus in the eastwardly direction.

Contention of S. P.

Benson, eastern terminus of P. & E.

(4925) I have the excerpt here, the original articles being filed in the Territory of Arizona. "Article VII. That the place from and to which the proposed road is to be constructed and the counties into and through which it is intended to pass, and its length as near as can be set forth are as follows, to wit: 'Beginning at a point in the City of Phoenix in the County of Maricopa in said Territory, at a point of intersection with the railroad track of the Santa Fe, Prescott & Phoenix Railway Company, in said city, thence in a southeasterly direction through the counties of Pinal and Pima to the City of Benson in the County of Cochise in said Territory of Arizona, a distance of about one hundred and eighty-five miles, more or less, with power and authority to extend such line to any other point or points in said territory and to build to and from the same such branch lines as said company may decide.'" At the time of the construction by the Phoenix & Eastern, and up to the time of their departure from the south line, and their crossing the River to the north line, two miles west of Kelvin, it was in our minds and in our knowledge that the Phoenix & Eastern, by its articles of incorporation, contemplated the construction I have just quoted therefrom. During the process of construction of the Phoenix & Eastern from Phoenix to Florence, and beyond Florence, and along the south bank of the Gila River to the point of departure, where they crossed to the north bank two miles west of Kelvin, and with the knowledge in our mind that they contemplated a road to Benson as the terminus, we did not take any steps or do anything in any way, shape or manner to interfere with or obstruct the construction or progress of their enterprise. I think, prior to their departure from the south to the north bank, a reconnoissance survey had been made by Randolph, but we made no survey with a view to filing any map of

Excerpt from articles of incorporation.

S. P. supposed P. & E. intended to follow line described in charter.

Did not interfere with that line.

definite location until afterward. During the construction of the Phoenix & Eastern, and during the litigation itself, the contention was made by Mr. Murphy and his people, by the Phoenix & Eastern, with reference to its proposed terminus, as being Benson, or to its continuing on from Dudleyville to Deming.

(4926) "Their contention, as evoked by our claim that they were moving on the north side to secure the approach to the Gila Canyon in order to obstruct our contemplated plan of construction, was that they were only going on the north side because they could get a better curvature there for these 18 miles, and would get better local patronage from prospective mining industries on the north side to an extent that would warrant them in building the two bridges—one across to the north side and one back again to the south side." While the transaction was in fieri, that contention was made manifest to me by the sworn testimony of Mr. Murphy in the trial of the case in Arizona, which testimony I heard, and my memory of it corresponds substantially to the copy of it which I made from Mr. Murphy's evidence in the case, and which is as follows: " 'I had something to do with the making of the change of the route of the Company's road from the south side of the Gila River in Pinal County at a point about two miles west of Kelvin to the north side of said river. The change was authorized by me. We were progressing with our work up the Gila and were making numerous observations and a study of the country. We were confronted with the fact that our alignment on the south side contained considerable heavy curvature. From our observation and investiga-
(4927) tion it was apparent to the company and to myself as its president and the other directors that we would best serve the public by crossing the river to the north side and running on that side to a point near or opposite Dudleyville, as it was on the north side of the river that the largest mining interests were known to exist.

Mr. Murphy's testimony explaining change in line of P. & E.

" 'It was represented to us and understood by us that that section of the country could not very well be supplied when the river was up, for the river at times was impassable. I ordered an investigation of the facts by the Chief Engineer based upon information that we had been able to obtain and on the report of the engineer that we had examined the country to see whether it was the proper thing for us to do, all things considered, in serving the people there and in getting a good line. The investigation was made and communicated to me as to what could be done and what we could get in the way of a line as well as the advantages from a purely railroad point of view in undertaking to serve the country through there. As president of the company I immediately ordered Mr. Drake to make a preliminary survey. This preliminary survey was made to verify the conclusions that we had reached. Mr. Drake made that survey and communicated the results to me and as president of the Company I instructed him to adopt that line and proceed with the construction on the north side.' " Mr. Wm. A. Drake was then the Chief Engineer of the Phoenix & Eastern in charge of this construction work. The

contention of the Phoenix & Eastern, Mr. Murphy and his people, in respect to their proposed construction and terminus, was made manifest to me by Mr. Drake's testimony on the trial, and by affidavits filed during the preliminary motions for injunctions and to dissolve them prior to the trial. I heard Mr. Drake's testimony delivered at the trial, and made a copy of his testimony from the transcript of the testimony.

Testimony of Mr. Drake, chief engineer, as to change in line of P. & E.

(4928) Mr. Drake testified: " 'I am familiar with the change of location of the Phoenix & Eastern Railroad Company's line between Phoenix and Benson, beginning at a point near Kelvin and crossing the Gila river and extending to a point near Dudleyville. Before this change was made I examined the ground personally, rode and walked over it at various times, and advised the locating engineer to begin the work of making the surveys. From my examination of the ground it appeared to me, as an expert railroad engineer, that by crossing from the south side of the river, on which the first location had been made, to the north side and following it, including along the San Pedro River, for a distance of seventy-five or eighty miles that an improved line might be obtained—improved in the matter of alignment and saving in degrees of curvature and in avoiding conflicts with wagon roads. It also appeared that the future operation of the line might be less obstructed or interfered with by flood waters, by the drainage from the mountains, and that there were better prospects of revenue, traffic revenue, from the north side than from the south side. The resources of the country seemed to have developed in the meantime between surveys, and there was a better outlook for traffic on the north side. This examination of which I speak was made about the first of December, 1903; that is, the more definite investigations. It had been looked at in a desultory sort of way, even before that. By alignment, I mean less curvature, less sharp curves, less on the north side, affording easier curves and fewer of them. It is my recollection that we would save something like six hundred degrees of curves in the eighteen miles along the Gila River, of this disputed right of way, which begins at a point about a mile and a half west of Kelvin and extends a distance of fifteen or sixteen miles easterly. The elimination of this number of degrees of curvature is very valuable in the future operation of the road.' * * *

Nature of litigation.

"The litigation prior to the trial consisted in numerous applications for temporary injunctions and motions to dissolve them. Those applications were chiefly addressed to the discretion of the court (4929) and on questions of good faith by the respective parties. * * * We contended throughout these preliminary applications to the Court that their best line to Benson, which was their exclusive charter terminus, was along the south side of the Gila River, and that they had taken advantage of their opportunity, by being close to Kelvin and having a railroad behind them to convey their supplies, to cross over to the north side, and by filing a map secured for five years a right of way over the approach to the Box

P. & E. attempting to obstruct S. P.'s approach to Gila Canyon.

Canyon and perhaps the canyon itself in order to obstruct the contemplated line of ours, which they knew we contemplated. That was our contention. The courts were impressed by that, and to meet that contention— * * * The courts appeared impressed. I will correct 'was impressed,' and say the courts appeared impressed by that. To meet our contention they filed affidavits and gave this testimony to the effect that their purpose in going on the north side of the river was simply for the reason of the curvature and perhaps increased local traffic; and never, until I read it in Mr. Murphy's testimony in this case, had he or any of the persons interested in the Phoenix & Eastern Railroad and in that litigation mentioned the fact that they contemplated this low-grade line with respect to which he here testified."

Had not heard of Murphy's low grade line.

These facts and this history that I have testified to were in our mind and before us up to and including the pendency of the litigation in the Supreme Court of the United States and the making of the contracts referred to. We did not at any time from first to last intend to interfere with or obstruct the construction of any line to Benson. We did not at any time from first to last in this litigation intend to interfere with or obstruct the construction that was then proceeding under the auspices of the Phoenix & Eastern, except to the extent of conserving our interests in the essential canyon that I speak of—the Gila or Box Canyon. The appeal to the Supreme Court of the United States was dismissed after the Phoenix & Eastern was taken over by the Harriman interests.

Intended only to protect S. P.'s interest in Gila Canyon.

(4930) "The Phoenix & Eastern was not taken over by the Harriman interests until long after the lodging of our appeal in the Supreme Court of the United States. I know Mr. Murphy says that appeal was never perfected. He is wrong in that. It was perfected and docketed in the Supreme Court of the United States. * * * Pending the litigation and prior to the decision of the Supreme Court of the Territory, which was in the latter part of March, 1905, I think, possibly 1906, there were very heavy floods in the Gila River, as the result of which about a mile of the road which had been constructed by the Phoenix & Eastern over this disputed territory was washed out—not the railroad tracks simply were washed out, but the territory itself was washed out, and the course of the Gila River changed, so that the Gila River flowed for that distance right on this disputed right of way, on about half a mile of this disputed right of way, and I am advised does yet. We were advised of that fact prior, I assume, to the advices of it by the Phoenix & Eastern people; and our engineers surveyed a line about four miles in length, not of course on this disputed territory which was, as I say, then occupied by the river, but from one point on the disputed territory to another point on the disputed territory, and filed a map of amended location upon it and obtained an uncontested title to the right of way of that four miles right in the body of this disputed territory and essential to any railroad company that would

Appeal was perfected.

P. & E. washed out.

Strategic strip secured by S. P.

operate the railroad which had been built by the Phoenix & Eastern people.

"When the Phoenix & Eastern people recognized that we had that right of way and that they could not fill up this gap in their line without our consent, they came to us with a proposition which resulted in negotiations which culminated in our building a line of railroad over that four miles (I may be wrong as to the precise distance of the gap) and we leased it to them, they becoming our tenants for it at a rental amounting to five per cent. of its actual cost of construction to us, one of the provisions of the lease being that it was determinable at our will on ninety days' notice. This was prior to the contracts in this present litigation. * * * The negotiations commenced immediately after we had filed our maps, which, of course, was immediately after the floods, and the negotiations were conducted rapidly, in order that the road might (4931) be constructed and they could resume the operation of the 80 or 90 miles of railroad which had been built to Dudleyville. * * * The floods took place during the winter, when the case was argued in the Supreme Court of the Territory. The Supreme Court meets about the middle of January and hears arguments, and renders its decisions about the 30th of March." The year I am speaking of was 1905, possibly 1906, but I am confident it was 1905. "As a part of this history, illustrating the conditions in Arizona as between the Phoenix & Eastern and the Arizona Eastern, the position of the Phoenix & Eastern was made manifest to me and to Mr. Randolph by a letter," Defendants' Exhibit 262 (Ives), written by Mr. Drake to Mr. Randolph (4932) as follows:

P. & E. became a tenant of S. P.

DEFENDANTS' EXHIBIT 262.

(Ives.)

Mr. Drake's letter.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY

(and leased lines.)

W. A. DRAKE,
Vice-president and
Assistant-General Manager.

PRESCOTT-ARIZONA, *April 23, 1907.*
File 54.

MR. EPES RANDOLPH, *Pres't,*
Maricopa & Phoenix Railway,
Tucson, Az.

DEAR SIR:

I have thought it best to address you about as follows:

The Phoenix & Eastern Railroad was originally designed and built as a cross-country railway for the country's development, expecting to tie to other roads at Benson, Arizona, and the only construction features which had in mind a through freight trunk line were those of the superstructure of Bridges 89 and 117 and the substructure of the latter. For the reasons just given, there are

Mr. Drake's letter.

many things in connection with the construction which are not at all in consonance with the requirements of heavy freight carrying roads of this day, and I may be excused for drawing your attention thereto instead of permitting yourself and your subordinates to find these things and follow with unfair criticism because of them, although you may have fully investigated these features long ago.

There are some 8 and 10 degree curves which may be reduced without great expense. There is one 14 degree curve at the Salt River bridge which may be reduced by carrying the curved line upon the bridge. At the Salt River bridge the shore line of the canal at the north end must be watched closely, as it is likely to undercut at times of high water. The piles under the concrete piers in the main river are supposed to be driven to cemented rock. Outside of the piers, rows of piles have been driven and the intermediate space filled with rocks, second-hand steel, etc., and I believe are now safe, but the filling should be watched. The lost pier was not so protected, hence its loss. The concrete piers in this bridge would better have been carried down to bedrock instead of being founded on piles, but this would have necessitated pneumatic foundations, which were not at the time considered necessary.

(4933) At Bridge 89, which is the first Gila crossing, the north pier, or abutment, was designed for a short span and afterward enlarged. The piles are driven to solid rock. Rows of piles are driven outside of this pier and the intermediate space filled with large rocks. This filling should always be watched after high water, although it has stood several high water periods without harm; but until the rock has settled to a permanent bearing, it should, as I say, be closely watched. There are several points where the river threatens the embankment. We have driven a good many piles at these places and made some second-hand timber cribs filled with rocks, using old mine hoist cable, barbed wire, mesquite brush, etc., and all of the points in question are fairly safe, unless it may be one at a point about a mile west of Burns siding upon the Burns and Locust ranches. This place should be watched closely until it is more thoroughly protected. All the others of course need watching, but they have withstood very high water, the November flood having reached the maximum line. All the riprap which we placed last year has done perfect service, but there are places where more may be used with advantage. If the road should become a through freight trunk line, the pile should be replaced with heavy riprap. I need not advise you that it is well to use brush, wire cable, barbed wire, willow trees, etc., in the riprap wherever possible.

You will have observed that all the rails with which this track was laid are second-hand rails, and in certain places many of them were in bad condition. But little track repair work has been done upon the line east of Kelvin, and, for that matter, the number of section men employed has been very small at all times. All of the bridges were pile bridges built for a good branch railway, but not for the very heaviest freight locomotives. Had the construction of

the railway been initiated in the light of present information, it is likely that said construction would have been different. I presume you will agree with me that, so far as the future may be consistently contemplated, all railroads should be built to conform to the requirements as they now appear to us; in other words, it is a waste of money to build a branch line with little traffic under the specifications of a main through heavy freight line—construction work should be consistent with the business in view as far as such business can be foreseen.

Very truly yours, (Sgd) W. A. DRAKE.

(Stamp: Office of President, Tucson, Ariz., Apr. 24, 1907.)

(4934) This was virtually a letter from Mr. Drake as he ended his association and connection with the railroad—the last of the series of declarations upon the subject that I am aware of or have had access to. I have endeavored to make this history as complete as possible. After the contract Mr. Drake stayed and helped us out for awhile, and I think this ended his connection. Prior to the actual trial of the case it was in our mind that the pleading of the Phoenix & Eastern expressed their contention touching the matters in controversy. I have an extract from the amended verified complaint of the Phoenix & Eastern, reading as follows: "'That in December, 1903, the President of said plaintiff company (Phoenix & Eastern) directed its chief engineer to survey a line for a railroad, which would cross the Gila River at some convenient and desirable point east of Florence, and continue on the north bank of said river to Dudleyville, and thence by a convenient and desirable route to a connection south of Dudleyville with the survey which had theretofore been made.'" I have now stated with tolerable fullness the history of the collision, if such it may be called, between the Phoenix & Eastern and the Arizona Eastern, and the conduct of the parties therein. The Secretary of the Interior decided adversely to our contention in respect to the disputed right of way, after the trial in Arizona, and gave the right of way to the Phoenix & Eastern.

Extract from complaint of P. & E.

Decision of Secretary.

(4935) The Supreme Court of the Territory held that it had no jurisdiction, giving Mr. Murphy's company the right to remain in possession temporarily. "The decision of the Supreme Court of the Territory was that until the Secretary of the Interior determined the matter pending before him, the courts had no jurisdiction. After the determination of the Secretary, whatsoever it might be, the Supreme Court of the Territory said that the courts had the right to determine whether or not the Secretary erred in any matter of law; and we had authority by virtue of the decision of the Supreme Court of the Territory, by language employed by it in its decision, to institute such action for that purpose, as we might see fit, after the Secretary should have abandoned jurisdiction by rendering a final decision." We did not propose to institute any such action until the Supreme Court of the United States had perhaps reversed the

Decision of Supreme Court of Territory.

Confident of reversing decision.

Supreme Court of the Territory. We had not been beaten by the Supreme Court of the Territory, and we had absolute confidence that the Supreme Court of the United States would reverse it. The Court held against the contention of both sides, that it had no jurisdiction. It did not pass upon the question as to who owned that right of way.

No disputed questions of fact.

(4936) The Secretary of the Interior approved their maps, but I do not think that the approval of their maps when we were endeavoring to have our maps approved, gave them the right of way. I think the courts would have to determine that. I do not think there were any disputed questions of fact for the Secretary to decide, bearing upon the ultimate rights of the parties. Mr. Randolph is the representative in the Southwest of what are called the Harriman interests. I am counsel for the railroad corporations that he represents, a director in all of them I think, and during all of these times served as Secretary and organized them, and I think my relation was something more than that of mere counsel.

Lines—Phoenix to Mesa.

Phoenix to Mesa, S. P. line, is about 10 miles, it may be 17; it is out in the Valley of the Salt River, a very broken region. The line of the Phoenix & Eastern, Mesa to Phoenix, would have been competitive with the S. P. from Mesa to Phoenix, and with any extension of our line from Mesa up towards this Box Canyon. (4937) It was over a year after the action of the Secretary of the Interior that the Santa Fe turned over this line that it had constructed to the S. P. The line of the Phoenix & Eastern has not been constructed down to Benson since we acquired it; they stopped work on it a year before they sold out to the S. P.; they never did any work beyond Dudleyville. There was no contest beyond Dudleyville at any time, they could have been working at Dudleyville from 1903 on.

P. & E. stopped at Dudleyville.

San Carlos.

San Carlos I should say is 40 miles from Dudleyville, on the other side of the canyon. This disputed right of way is not part of the canyon proper, it is the approach to the canyon. Both lines were building along that approach, our line higher up, their line lower.

Construction of two roads.

(4938) Two roads "could have been built, but if there had been two rights of way the construction of a road on another right of way than the one in dispute would have cost, so the engineers said, about $200,000 more." As to whether two lines could have been built, it is a question between engineers as to what would be—the lower grade is the cheapest to build, but the higher grade is less liable to wash out. We were building on a grade 15 or 20 feet above their grade, but on the same right of way, within the 200-ft. limits. At parts of the way we were on one level, they on the other; at parts they were on the same level, I suppose. The S. P. had reached San Carlos from the East.

Gila Valley, Globe & Northern.

The Gila Valley, Globe & Northern passed through San Carlos 20 or 25 miles from Globe; it did not pass into the canyon from San Carlos. The canyon was unoccupied, and about 40 miles long from Dudleyville to San Carlos, and the 18-mile strip in dispute was west of the canyon.

Strip in dispute.

(4939) The Santa Fe built toward the East, without dispute, to the westerly end of this disputed strip, as to which there was this controversy. I

did not say that I was advised that the Santa Fe had also put some surveyors in the canyon. My first advice of that was Mr. Murphy's testimony to that effect in this present case; they disavowed that they were going through the canyon. The line through the canyon is now being built "but we have had trouble. There is an irrigation enterprise under the reclamation service contemplated there, and they want us to change our line by elevating it, and the dispute is going on. I have been told that it was decided by the Secretary in our favor, in the past few days, but I don't know whether it has or not. We did do a lot of construction work in the canyon."

Line through canyon now being built.

I believe that we expended more than a million dollars in that construction work. We began it about the time this litigation commenced, shortly after that. Up to the time the Phoenix & Eastern moved over to the north side of the river, we had not filed any maps of the canyon; we commenced activities then. "Three companies were organized for that road to Durango—the Arizona & Colorado of Arizona, the Arizona & Colorado of New Mexico, and the Arizona & Colorado of Colorado. The Arizona & Colorado of Arizona had been organized prior to December, 1903, when the Phoenix & Eastern undertook to go to the north side of the river. * * * (4940) I don't know whether we had or not applied to the Indian Department for the right. That line is on an Indian reservation, and before you can even survey you must get permission from the Indian Department of the Interior Department for permission to make the preliminary surveys. I forgot whether we had at that time applied for that permission or not." The records will show that. I know we were considerably delayed in getting that permit to go through the reservation.

Companies organized to build line to Durango.

(4940) WILLIAM DAVID LINCOLN (3)

Lincoln (3).

I intended to say that uniform speed had more to do with the average daily movement of the cars than high speed on some trains. It is the uniform speed which raises up the daily average of the car—that is, the uniform speed on all freight. The uniform speed we make on our freight I think is the cause of the good showing which we make on that statement. The uniform speed will take into consideration the business which is competitive; we make very little if any faster time on competitive business, as you consider it, than we do on all our other business. We make very little faster time, if any, into Colorado points and Portland than into Ogden—I would say off-hand there is not a difference of over three miles an hour on our fastest freight to Portland and our Ogden freight from Omaha to Green River. (4941) From Omaha to Green River by the Portland fast freight line it is not a good many hours faster than by the Ogden-San Francisco freight train. I don't believe it is ten hours faster. It may be ten hours faster, but a good deal of that ten hours can be taken up by the time of the district terminals being reduced. The schedule of the Portland freight train is about two miles an hour faster, but the difference in time would be governed

Uniform speed cause of U. P.'s good showing.

Comparison in time of freight trains.

by some time at district terminals. We go on the schedule of the train. As to this matter of speed not having anything to do with the question, while there is a variation from month to month, the conditions change at the different periods of the year. In the season when the fruit and stock business is heavy, the average is brought up a little more because we haven't as many idle cars lying around—which must be taken into consideration. The regular speed is the controlling factor. We move our fruit trains very little faster, if any, than our regular California-Ogden train. They move from 12 to 13 miles an hour. We move eastbound freight very little faster than westbound.

Regular speed is controlling factor.

Schedules and terminal delays.

(4942) The westbound is less than 10 hours according to the schedule, but the terminal delay on eastbound is not quite as long as on westbound—the terminal time is not quite as long on eastbound—9.9 miles an hour is the schedule time, including stops. The delay at district terminals cuts a big figure because it is included in the 9.9 miles an hour. Omaha to Ogden, with that freight train, is 100 hours and 45 minutes; eastbound fruit schedule about 83 hours; other than fruit it will run about 95 to 100 hours. Referring to the average speed of 9½ miles per hour, Omaha to Ogden, the schedule outside of the time at district terminals averages 11 to 12 miles an hour. The shipper is interested in the time the freight takes, not whether it runs or stands still. The fact that we run our fruit trains 10 or 12 or 15 miles an hour, or faster than our eastbound freight other than fruit, from one terminal to the other, Ogden to Omaha, has very little to do with the average. Whether the fruit movement is light or heavy cuts very little figure. It is the uniform movement of all freight that cuts the figure. (4943) Livestock cuts very little figure, for it is only a couple of months in the year, and is moved but very little faster than the regular freight. It is the regular movement. It is mighty near right that we move fruit, livestock, lumber, coal, grain and everything else at practically the same speed on the U. P.

It is the uniform movement of all the freight that cuts the figure.

A memorandum was offered in evidence which is to some extent a correction of Mr. Mahl's testimony in respect to the times of the disposition of the S. P.'s Two-Five years 4½ per cent. bonds. The paper referred to was marked Defendants' Exhibit 263, and is as follows:

DEFENDANTS' EXHIBIT 263.

SOUTHERN PACIFIC COMPANY.

Memorandum in respect of disposition of proceeds from sale of Two-Five Years 4½ per cent. Bonds.

The records show that the proceeds from the sale of $15,000,000, face value of bonds between December 1, 1900, and March 31, 1901, amounting to $14,175,000, were applied principally as follows:

Floating debt paid off	$6,600,000
Advances to the Texas & New Orleans R. R. Co., for betterments and additions, equipment and new construction of Dallas Division	2,500,000
Advances to the Galveston, Harrisburg & San Antonio Ry. Co., for deficiency in operations, betterments and additions and equipment	580,000
Advances to the Oregon & California R. R. Co. for deficiency in operations, betterments and additions and new construction	400,000
For account of steamships under construction	1,200,000
Total	11,280,000

The remainder was held as cash on hand, and was subsequently expended for additions, betterments and new construction.

The proceeds from the sale of $15,000,000 face value of bonds between June 1, 1903, and January 31, 1904, amounting to $14,425,000, were applied principally as follows:

Construction of new lines	$5,650,000
Acquisition of new lines and other property	7,900,000
Total	13,550,000

(4944) "MR. DUNNE. I will offer in evidence, if your Honor please, and have marked as Defendants' exhibit, a mileage statement of February, 1901, and supplementary to that a telegram to me from Mr. W. A. Worthington, subject of course to any right that Mr. Severance desires to exercise, of cross-examining, checking or otherwise.

The papers referred to were marked Defendants' Exhibit 264, and are as follows:

DEFENDANTS' EXHIBIT 264.

Mileage February, 1901.

1. Ogden to Roseville, including branches		1,024.62
2. Roseville (and Davis) to Portland, including branches		1,158.33
3. Roseville south to the California and Arizona Line, including branches		2,701.21
4. Mileage, Southern Pacific Lines in Arizona, New Mexico, Texas and Louisiana, including branches:		
Arizona	481.00	
New Mexico	167.45	
Texas	2,391.07	
Louisiana	519.62	
		3,559.14
		8,443.30
Omitted:		
Sonora Railway	262.60	
Mojave to The Needles, leased A., T. & S. F.	242.51	
		505.11
Total, including omitted mileage		8,948.41
5. Mileage Union Pacific, Oregon Short Line, and O. R. & N. Co., itemized as to States and Territories:		
Union Pacific R. R.:		
Iowa	4.57	
Nebraska	1,020.44	
Wyoming	484.98	
Utah	97.76	

Missouri	.51	
Kansas	949.81	
Colorado	474.65	
		3,032.72
Oregon Short Line:		
Wyoming	92.34	
Utah	482.49	
Idaho	707.51	
Montana	a182.99	
Oregon	15.41	
		1,480.74
O. R. & N. Co.:		
Oregon	533.58	
Washington	473.19	
Idaho	86.82	
		1,093.59
Total, Union Pacific System		5,607.05

a Includes Butte to Garrison 56.59 miles operated by Northern Pacific.

(4945)

TELEGRAM.

March 30, 1910.

Chicago, 30.

P. F. Dunne.

Mileage of each line included in item two of statement sent you as follows:

Roseville to Oregon State Line	296.58
Oregon State Line to Portland	366.61
Oregon Branches:	
Portland to Corvallis	96.52
Woodburn to Natron	92.96
Lebanon Junction to Lebanon	11.50
Portland to Airlie	79.27
Sheridan Junction to Sheridan	7.18
Mohawk Junction to Wendling	15.95
Leased from North Pacific Term. Co. at Portland	1.72
Other California Lines:	
Marysville to Knight's Landing	27.75
Marysville to Orroville	25.97
Davis to Knight's Landing	18.64
Woodland to Tehama	100.84
Willows to Fruto	16.84
Total	1,158.33

W. A. WORTHINGTON.

R. 11:00 a. m.

COMPLAINANT'S REBUTTAL TESTIMONY.

NEW YORK CITY, TUESDAY, APRIL 5, 1910.

Hawley.

(4946) EDWIN HAWLEY (2)

Closely associated with C. P. Huntington.

I was associated with Mr. C. P. Huntington in business about nineteen years, quite close relations, probably to a greater extent than almost any other of his associates in business in New York. I was associated with him in connection with the S. P. in the position I had in charge of traffic here in New York, and as the owner of stock in the S. P., uniting with him in the purchase, at his request, of certain S. P. stock—the Crocker stock, one-fourth interest, sold through Speyer & Co.; (4947) the purpose being to increase our

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interest in the Company's affairs. One of the objects on the part of Mr. Huntington was to maintain control of the Company. This was a short time prior to his death, I am not very good on dates. The purchase was 100,000 shares. I saw Mr. Huntington in a business way nearly every day, at his office and house, our relations being quite intimate and confidential, and his habit was to talk over S. P. business with me. In those days I knew Mr. Harriman, and saw him occasionally in connection with Mr. Huntington, a short time before Mr. Huntington's death. We three made a trip for a couple of days to the Adirondacks, three or four weeks before Mr. Huntington's death. I saw Mr. Harriman occasionally in New York before Mr. Huntington's death, but not so often as I saw Mr. Huntington.

Knew Mr. Harriman.

(4948) Mr. Kahn's testimony is called to my attention as follows: After speaking of the fact that he thought it would have been prejudicial to the U. P. to have had some hostile influence come into the S. P., Mr. Kahn said: "So much so that Mr. Harriman, in the last year or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific, to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific system. That was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific." Later on in his testimony Mr. Kahn stated that he could not say that he was present at any such interviews, but in some way they came to his knowledge.

Mr. Kahn's testimony as to Mr. Harriman's efforts to arrange definite relations between S. P. and U. P.

I did not know or hear of this, Mr. Huntington never mentioned it to me, it may have taken place, however. I negotiated the sale for 475,000 shares of stock, which included the Huntington Estate holdings and mine, sold the stock to Mr. Harriman, transaction consummated at his house. I represented the Huntington interest and myself. (4949) My negotiations, so far as the U. P. was concerned, for the sale of the stock, were exclusively with Mr. Harriman. I say the matter was finally concluded at Mr. Harriman's house, Mr. Harriman, Mr. Schiff, Mr. H. E. Huntington and myself being present. I fixed the price for the Estate and myself, it was satisfactory to both parties. I never heard that Mr. Gould attempted to buy the Huntington stock, either from him or from the executors, or from anyone else. I was in the employ of the S. P. up to Mr. Huntington's death in August, 1900, as assistant general traffic manager. My immediate superior was Mr. Stubbs. I think in some respects the administration of Mr. Huntington's estate is still open.

Witness did not know of it.

Negotiated sale of S. P. stock to Mr. Harriman.

Fixed the price.

(4950) The Huntington stock was a part of the estate of C. P. Huntington, left by special bequest, I think entirely free from the

power of the executors. The property had not been distributed to the beneficiaries of the will, and the executors had not been discharged from their trust at the time this stock was sold. I was not employed to sell that stock. Mrs. Huntington authorized me to negotiate the sale probably sixty days before it was made; that was my first authorization. Mr. Huntington died in August, 1900, and the interview at which Mr. Schiff and Mr. Harriman were present, was in February 1901—that is, this interview and the sale of the stock took place at the same time. (4951) In the sale of this stock, so far as I was a factor in the transaction, I had no relations whatever of any kind with the board of directors of the U. P., nor with the executive committee of the U. P., as such. At this final interview, at which the transaction was closed, Mr. Jacob Schiff was present. He was at that time a member of the firm of Kuhn, Loeb & Co. It was Kuhn, Loeb & Co. who paid me for my proportion of the stock, and who paid for the Huntington stock.

Authorized to make sale, 60 days before it was made.

Mr. Huntington died in August, 1900.

Mr. Schiff present at final interview, Feb., 1901.

I stated that my negotiations were entirely with Mr. Harriman, that I saw Mr. Schiff finally at the interview when it was closed. He did not take part in the negotiations. Mr. Harriman made no proposition to me for the purchase or control simply of the Central Pacific line, there were no negotiations except for the purchase of the stock. (4952) My position in the matter was that about sixty days before the stock was sold I was authorized to sell it—that is the short of it. My business relations with Mrs. Huntington after her husband's death were friendly, advising her about her affairs, more or less, I was not employed, I put this through without any compensation from the Huntington Estate.

No proposition to witness for purchase of Central Pacific, alone.

(4952) GEORGE J. GOULD.

Gould.

Head of Gould lines.

I live at Lakewood, New Jersey, am connected with the Missouri Pacific, Texas & Pacific, International Great Northern, and the Wabash west of the Missouri River, the D. & R. G. and the Western Pacific. (4953) Mr. Jeffery is President of the D. & R. G., and had been previously to 1900. I acquired my interest in the D. & R. G., or the control of that line, in the fall of 1900 and the winter of 1901. I am chairman of the board. When I acquired my interest in the D. & R. G. that company was in negotiation for the purchase of the Rio Grande Western, closing it, I am inclined to think, after I came into the directorate on February 14, 1901. Before that time I had been a director of the U. P., and for some time thereafter—continuously since the reorganization. My relations with Mr. Harriman were rather intimate, we were friendly, I was on the U. P. Executive Committee. When negotiations were pending on the part of Mr. Harriman for the S. P. stock, he advised me of them, not in the detail, but in the general. I did not approach any representative of the Huntington Estate after Mr. Huntington's death, or while these negotiations were pending, with a view to purchasing that stock. I did talk with Mr. Harriman

Acquired interest in D. & R. G. in fall of 1900.

D. & R. G. bought R. G. W. Feb. 4, 1901.

Mr. Harriman advised him of negotiations for S. P. stock.

during these negotiations about the possibility of my taking or endeavoring to buy that stock if he did not want it.

(4954) Mr. Harriman seemed at one time to get a little lukewarm about taking the stock, about making the purchase, and I told him if he did not want it and had no objection I would take it for our interests. As a vague guess, I should imagine this was in September or October; and after the acquisition of the stock, or the contract for its purchase, I suggested to Mr. Harriman that he let the railroads with which I was connected have a half interest in the purchase—the Missouri Pacific and the Texas & Pacific. He turned the suggestion down, declined it. When I told him that I had acquired the control of the D. & R. G. he asked me for a half interest for the U. P., first saying that he supposed I had bought it for both interests. I told him no, and that I could not arrange it. I do not remember of any effort being made to buy the Central Pacific line alone. The D. & R. G. stock that I acquired was bought largely in the London market, the control being in the hands of the public, I think, Mr. Coppell representing the stock as chairman of the board.

Witness wanted S. P. stock.

Wanted half interest.

(4955) I was interested in the Missouri Pacific and the Texas & Pacific, in 1900, anterior to the purchase of the S. P. stock. The Texas & Pacific runs through Texas, and terminates at El Paso. It was a connection with the St. Louis & Iron Mountain —in which I was interested, it is part of the Missouri Pacific—at Texarkana, prolonged to the north. In 1900 the Texas & Pacific had no outlet into California other than by the S. P. rails from El Paso, except it could send business by the Atchison, I think, up to Albuquerque, but no direct outlet except over the S. P. rails. The St. Louis & Iron Mountain, having its southern terminal point on the Texas line at Texarkana, terminates at the north in St. Louis, and then the Missouri Pacific strikes out to the west, going to Pueblo. Between Pueblo and Ogden the Rio Grande Western and the D. & R. G. made a line in 1900, when I was trying to buy the control of the D. & R. G. in the market, and the D. & R. G. at that time was negotiating for the Rio Grande Western; that situation, if it had been brought to pass between the D. & R. G. and the Rio Grande Western, would have unified the line between Pueblo and Ogden, and if I had acquired the Denver & Rio Grande I should have accomplished an extension of the Missouri Pacific from Pueblo to Ogden.

In 1900, only California outlet for Gould lines was via S. P.

Control of Rio Grande roads and S. P. would have given through line via Ogden.

(4956) The D. & R. G. had no other railroad outlet from Ogden to California except over the S. P. rails. Before the U. P. purchased the S. P. stock, I suggested to Mr. Harriman, during the negotiations, that if he did not want the properties—the S. P.—I would take them for my interests. I made him aware of my willingness to take the property in the event that he did not consummate the negotiations with the U. P. I could not place the date with any absolute degree of accuracy. I should think it was some time in September or October, 1900. It was whilst he was proceeding with

Suggested to Mr. Harriman he would take S. P. stock if Mr. H. did not want it.

That was in Sept. or Oct., 1900.

Suggested to Mr. Harriman that he would take a half interest.

his negotiations with the Huntington estate. After Mr. Harriman had accomplished the purchase of the S. P. stock, I suggested to him that I take a half interest, or, rather, my interests take a half interest. I should think it was about the time that Mr. Harriman made the S. P. stock purchase—about the time he completed it. He declined. As to whether I made any statement along those same lines at that time to any member of the firm of Kuhn, Loeb & Company: I think I mentioned it to Mr. Schiff, probably. Yes, I think I mentioned it to Mr. Schiff.

Made same statement to Mr. Schiff.

"Q. You have stated to Mr. Severance that you were friendly with Mr. Harriman at the time of these negotiations, that you were a member with him of the executive committee. Do you know whether during the pendency of his negotiations for the purchase of the stock (4957) and before the consummation of the sale, he was apprehensive that other interests over and above your own interest were desirous of getting that stock? A. Yes, he talked it over with me several times, and he was afraid the North-Western would build from the Black Hills. They had a line up to the Black Hills, and he was afraid the North-Western would build from the terminus of their line through to Ogden, going through a canyon that lies to the north of Ogden. Ogden Canyon, I think the name is, but I am not quite sure. Then he also used to be afraid of the Burlington building through to Ogden. Q. Is it not a fact that in 1900, after Mr. Huntington's death, it was generally understood among railroad men of your standing and Mr. Harriman's that the Southern Pacific stock would be sold? A. Yes; I supposed it would come on the market." In the fall of 1900, or at any time, I did not personally attempt to buy the stock, I would have considered that disloyal to my associates, to Mr. Harriman.

Mr. Harriman apprehensive that the North-western and Burlington would want the S. P.

Generally understood that S. P. would be sold.

Miles.

(4957) GEORGE E. MILES.

New York. C. P. Huntington's private secretary.

I have lived in New York nearly eleven years, and before that for many years in Brooklyn; was Mr. C. P. Huntington's private secretary up to the time of his death (4958), attending to all the correspondence and traveling with him, went to California with him on his trips, living when there at his house and before that at the Palace Hotel. My relations with him were quite intimate outside of business. I was at his camp in the Adirondacks when he died. Had a desk in his room at 23 Broad Street, Mills Building, New York. I very frequently talked with him over his business matters; of course sometimes not. My relations with him were of an exceedingly intimate character. Mr. E. H. Harriman came to Mr. Huntington's office occasionally, short visits, I don't recall ever seeing him have a long conversation with Mr. Huntington. "Q. Mr. Kahn was on the stand the other day as a witness for the defendants, and in the course of his testimony he stated that it was considered it would have been prejudicial to the Union Pacific to have had some hostile influence come into the Union Pacific, and then he proceeded (I am quoting his testimony): 'So (4959) much so that Mr. Harriman, in the last

Mr. Harriman occasionally came to Mr. Huntington's office.

year or two of Mr. Huntington's life, made every endeavor to arrange definite relations with Mr. Huntington so as to assure for all times the permanence and the unaltered relation between the Union Pacific and the Southern Pacific as far as the use of the Central Pacific line was concerned, and in fact he offered to Mr. Huntington, on behalf of the Union Pacific, to buy the Central Pacific alone, if a way could be found to separate it from the rest of the Southern Pacific System. That was declined. And there were also declined all other overtures on the part of Mr. Harriman looking to a permanent and definite and unalterable relationship between the Union Pacific and the Central Pacific.'" No such negotiations ever came to my attention.

Negotiations between Mr. Harriman and Mr. Huntington did not come to his notice.

"Q. Mr. Miles, I would like to read Mr. Kahn's testimony to you once more. * * * Calling your attention to that testimony, isn't it entirely possible, so far as you are concerned, that just precisely that situation may have existed between Mr. Harriman and Mr. Huntington? A. It is possible. Q. The truth of it is, you don't appear to know anything at all about that stock purchase, do you? * * * A. The stock purchase, you are talking about? Q. Yes. A. After Mr. Huntington's death? (4960) Q. Yes. A. I wasn't connected with the estate in any capacity at all."

Situation described by Mr. Kahn may have existed.

(4960) FRANK W. WHITE (3)

White.

I have checked Mr. Spence's table, showing in February, 1910, some 77 items upon which there is a differential. His figures are correct. I have made a supplemental list of the items appearing in Complainant's Exhibit 84, showing all the differentials as they existed January 1, 1909. This table is Complainant's Exhibit 212, and sets forth the water-and-rail rates and the all-rail rates—the rates from the Morgan Line pier and also all-rail from New York City proper. These differentials do not apply to points in the seaboard (4961) zone from which rail or water haul to New York is absorbed by the Morgan Line—only from the Morgan Line or Mallory Line pier.

Mr. Spence's figures correct.

"Q. On page 887 of the printed record, when you were being examined the first time you were on the stand, you were asked, 'Now, since 1901, as shown by Exhibit 84, how many of those items have been changed until they are now the same?' And you answered, 'There are about twenty left in which the rates for the Morgan Line are lower than they are for the all-rail line.' I understand that you misunderstood that question and desire to correct your answer. A. Yes, sir. Q. Will you state what you understood when you were asked and what you intended to state? A. I understood it to mean that there was an advance of rates on January 1, 1909, and I understood it to mean how many of the rates had not been advanced—in other words, remained the same as they were before. Q. Well, how many were there that were not advanced? A. Twenty. Q. Twenty or nineteen. A. Nineteen."

Explains former testimony.

(4962) Complainant's Exhibit 212 is as follows:

COMPLAINANT'S EXHIBIT 212.

(White)

INTERSTATE COMMERCE COMMISSION.

Bureau of Tariffs, March 26, 1910.

Statement Showing Differential Rates in Cents per 100 lbs., unless otherwise specified, in effect Dec. 1, 1908, and Jan. 1, 1909, on Traffic from New York, N. Y., via all rail, and from Morgan Line Pier, via Morgan Line, to San Francisco, California.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Agricultural implements N.O.S., viz.: Harrow Teeth, min. C.L. wt. 30,000 lbs	125	75	135	85				
Ammonia, Sulphate of, in packages, min. C. L. wt. 40,000 lbs.						60		
Asphaltum, in packages, min. C. L. wt. 60,000 lbs		50				50		
Automobiles, passenger and freight					600		700	
Bananas, prepaid or guaranteed, charges to be computed on basis of railroad weight as ascertained at point of shipment, min. C. L. wt. 20,000 lbs						125		
Barytes, min. C. L. wt. 60,000 lbs	125	50			125	50		
Beans and Peas, dried, split, or whole, in sacks or bbls. min. C. L. wt. 40,000 lbs.	125	75	135	85				
Bones, min. C. L. wt. 30,000 lbs.						65		
Bottles, wine or beer, and whiskey or brandy bottles of similar shapes, common flint, green, black or amber (not including druggists prescription bottles of similar shape, or flasks, any style finish); in bulk or in boxes, casks, or crates, min. C. L. wt. 30,000 lbs.						75		80
Brass Goods; Not silver-plated viz.:								
Brass ingots	180	120	185	125				
Plate and Sheet, completely boxed		115		125				
Rods (including Iron Rods, brass-covered), completely boxed		115		125				
Brick (clay products), as follows:								
Fire brick or fire brick and fire tile of various shapes and fire clay in straight or mixed carloads (but not including tank blocks or retort settings), min. wt. 40,000 lbs.						50		
Common or pressed, boxed or crated, ornamental figured, boxed or crated, shaped, boxed or crated, invoice value not exceeding $5.00 per ton, min. C. L. cwt. 50,000 lbs		50		75	100			
Fire Brick (of common brick shape), and fire clay, boxed or crated in min. 40,000 lbs.		50		75	100			

(4963)

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Brick (clay products), as follows—Continued.								
Fire brick (of irregular shape), retort settings (including tank blocks for glass furnaces), and fire clay linings for grates, stoves or furnaces, N.O.S. boxed or crated	.....	.....	.....	.....	150	.....	.....	.....
Calcium, chloride of, in iron drums, min.C.L.wt.40,000 lbs.	.....	50	.....	.....	.....	.....	.....	.....
Canned Goods, viz:								
aFish,Fruits (not preserves) Meats (including potted or deviled), vegetables, baked macaroni and cheese, soups, breads and puddings, in hermetically sealed cans, boxed, min. C. L. wt. 40,000 lbs.	145	95	150	100	.....	95	.....	100
aCanned Corn, boxed, straight C. L. min. wt. 40,000 lbs.	.....	90	.....	95	.....	90	.....	95
aCanned Fish, canned clam juice and canned clam chowder, boxed,min.C.L. wt. 40,000 lbs	.....	90	.....	95	.....	90	.....	95
Canned meats or meats in glass, hermetically sealed (including potted or deviled), boxed, straight or mixed, C. L., min. wt. 40,000 lbs.	.....	90	.....	95	.....	90	.....	95
aCanned beans and canned peas, boxed, min.C.L.wt. 40,000 lbs.	.....	90	.....	95	.....	90	.....	95
Carbon clinker, in packages min. C. L. wt. 40,000 lbs	.....	77	.....	.....	.....	.....	.....	.....
Cement, in packages, min C.L. wt. 40,000 lbs	.....	45	.....	.....	.....	.....	.....	.....
Cement, Building or Paving, N. O. S. in packages, min. wt. 40,000 lbs.	100	75	105	80	100	50	.....	.....
Cement (Tar), Building or Paving, in packages, min. C. L. wt. 60,000 lbs	100	50	125	75	100	60	.....	.....
Cement Work for building purposes (not including statuary or figures), O. R. B.	.....	75	.....	80	.....	.....	.....	.....
Same, boxed or crated	100	.....	105	.....	.....	.....	.....	.....
Cereals and Cereal Preparations, viz:								
Barley Malt, in packages, min. C. L. wt. 30,000 lbs.	115	65	.....	.....	.....	.....	.....	.....
Brewers Grain or Refuse, Dry in packages, min. wt. C. L. 30,000 lbs	130	85	.....	.....	.....	.....	.....	.....
Pop Corn, in packages, min. C. L. wt. 30,000 lbs.	150	100	.....	.....	.....	.....	.....	.....
Brewers Grits,Brewers Meal, Corn Meal, Corn Chop or chop feed, chop corn, cracked corn and hominy, straight carloads (excepting to Rule 15), min C. L. wt.50,000 lbs. unless capacity of car is less than 50,000 lbs. in which case min. C.L.wt. will be capacity of car	.....	.....	.....	.....	.....	70	.....	80
Composition for Roofing, min. C. L. wt. 40,000 lbs	.....	75	.....	85	.....	.....	.....	.....
Conduits, underground, for electric wires, stone, clay or cement, min. C.L. wt. 30,000 lbs.	.....	75	.....	80	.....	75	.....	80

a Min. wt previous to Jan. 1st, 30,000 lbs. via Morgan Line.

(4964)

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Conduits, underground, for electric wires, stone, clay or cement, in packages	125	.....	130	.....	125	.....	130	.....
Creosote Oil or Tar Oil, in barrels or in tin cans, boxed, min. C.L. wt. 30,000 lbs	.....	.....	.....	.....	.....	55	.....	.....
Copper Goods, not silver-plated, viz.:								
Plate and Sheet N. O.S. completely boxed, min. C. L. wt. 30,000 lbs.	.....	115	.....	125	.....	.....	.....	.....
Rods completely boxed	.....	115	.....	125	.....	.....	.....	.....
Copper, sulphate of (bluestone), min. C.L. wt. 40,000 lbs	.....	60	.....	.....	.....	.....	.....	.....
Drums, iron, empty, returned, min. C.L. wt. 20,000 lbs	.....	.....	.....	.....	150	50	.....	.....
Ferro Manganese, in pigs, or ground (in casks) min. C.L. wt. 60,000 lbs	.....	50	.....	75	.....	.....	.....	.....
Fertilizer, N. O. S., including dried blood, tankage and phosphate rock, min. C.L. wt. 40,000 lbs	.....	60	.....	.....	.....	60	.....	.....
Food, poultry, viz. Ground meat and bone, alfalfa meal, blood meal, clover meal, gluten meal, cut alfalfa, cut clover, grain screenings, millet seed, crushed shells and charcoal, in packages, min. C.L. wt. 30,000 lbs.	110	60	.....	.....	125	60	.....	.....
Furniture, O.R.B. and chafing, viz.: Sideboards, buffets, combination buffets, and sideboards and chiffoniers, net cost of each piece not to exceed $16.00 and so receipted for, min. C. L., wt. 16,000 lbs.	.....	160	.....	175	.....	.....	.....	.....
Gas Liquor or concentrated Ammoniacal Liquor, in iron drums, or in tank cars, min. C. L. wt. 50,000 lbs	.....	.....	.....	.....	.....	50	.....	.....
Glucose, in barrels O.R.L., Rel. min. wt. 30,000 lbs	.....	75	.....	85	.....	.....	.....	.....
Grape Sugar, O.R.L., Rel. min. C. L., wt. 30,000 lbs	.....	75	.....	85	.....	.....	.....	.....
Grind Stones, mounted or unmounted, O. R. B., min. C.L. wt. 30,000 lbs	.....	75	.....	100	.....	.....	.....	.....
Grind Stones, unmounted, O.R.B.	125	.....	150	.....	.....	.....	.....	.....
Hemp, Sisal, Istle or Ixtle in bales, min. C. L. wt. 24,000 lbs	.....	60	.....	75	.....	60	.....	75
Iron and Steel, Articles of, viz.:								
Billets, Blooms, ingots muck bar and scrap steel, min. C. L. wt. 60,000 lbs	100	50	125	75	100	60	.....	.....
Pig, min, C. L. wt. 60,000 lbs	100	50	125	75	100	50	.....	.....
Pipe fittings and connections, including cleanout fittings, cocks or valves, wrought, cast or malleable, or iron body cocks, valves and pipe connections (the bodies or principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also wrought iron pipe bends, with or without wrought or cast iron flanges	.....	.....	.....	.....	.....	85	.....	10

Statement Showing Differential Rates in Cents per 100 lbs., etc.—Continued.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Iron and Steel, Articles of, viz.—Continued.								
Tank or reservoir material, viz.:								
Beams, columns and circular frames for top, (4965) min. C.L. wt. 30,000 lbs.	.....	75	.....	.....	.....	.....	.....	.....
Ties, baling, min. C. L. wt. 40,000 lbs.	.....	65	.....	80	.....	.....	.....	.....
Washers, straight C.L. min. C. L. wt. 30,000 lbs.	.....	65	.....	80	.....	.....	.....	.....
Lime (including hydrated lime) in barrels, boxes, bags, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	50	.....	.....
Limestone and whiting, ground or lump in packages, min. C.L. wt. 60,000 lbs.	.....	50	.....	.....	.....	50	.....	.....
Lumber, N. O. S., (including built-up, combined or veneered wood), except woods of value, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	75	.....	85
Mattresses and frames metallic, wire cots, wooden folding cribs with woven wire bottoms (KD) or folded flat, wire and spring beds and bottoms, and canvas cots, not upholstered, in packages	160	.....	.....	.....	.....	.....	.....	.....
Mince Meat and Pie preparations in pails or tubs when packed in boxes or barrels; in kets or kegs; in glass or paper boxes, boxed; in bulk, in barrels or half barrels, min. C. L. wt. 30,000 lbs.	140	90	145	95	.....	.....	.....	.....
Mineral Water Bottles in original packages, empty second hand, returned, min. C.L. wt. 24,000 lbs.	.....	.....	.....	.....	.....	75	.....	.....
Nails and Spikes (not including railroad spikes or ship and boat spikes), cut or wire N.O.S. in boxes or kegs; wire (fence) iron or steel; smooth annealed, plain or galvanized; barbed, galvanized or painted; staples; wire hoops, straight or mixed C. L. min. wt. 40,000 lbs.	.....	65	.....	80	.....	70	.....	85
Nails and spikes (not including railroad spikes) cut or wire, N. O. S. in boxes or kegs	110	.....	125	.....	.....	.....	.....	.....
Nails, Cement-coated, in boxes or kegs, min. C. L. wt. 40,000 lbs.	110	65	125	80	.....	70	.....	85
Plaster Land and Adamantine, min. wt. 40,000 lbs.	.....	70	.....	75	.....	.....	.....	.....
Plaster Land and Adamantine, in packages	120	.....	125	.....	.....	.....	.....	.....
Pulp, wood, in packages	115	65	125	75	.....	.....	.....	.....
Oil cake and oil cake meal, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	60	.....	.....
Onions, in packages, min. C. L. wt. 30,000 lbs.	.....	.....	.....	.....	.....	90	.....	.....
Ore, iron, ground, min. C. L. wt. 60,000 lbs.	.....	a60	.....	.....	.....	a60	.....	.....
Pipe, Sewer (clay) and drain tile	.....	.....	.....	.....	.....	65	.....	.....
Pipe, Sewer (clay) and drain tile, boxed or crated	.....	.....	.....	.....	100	.....	.....	.....
Plaster, Building, N. O. S. in packages, min. C. L. wt. 60,000 lbs.	.....	.....	.....	.....	.....	50	.....	.....
Rags, including carpet moll sweepings, in packages, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	60	.....	.....

a Rate in cents per ton of 2,240 lbs.

Statement Showing Differential Rates in Cents per 100 *lbs., etc.*—Continued.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Railway Supplies, viz—Cont'd.								
Cars, narrow gauge or parts thereof, K. S. min. C. L. wt. 30,000 lbs. (4966)	.....	.....	.....	.....	.....	150	.....	.....
Railway Supplies, viz.:								
Brake Shoes, min. C. L. wt. 50,000 lbs.	.....	.....	.....	.....	.....	65	.....	.....
Car wheels and axles, min. C. L. wt. 40,000 lbs.	110	60	125	75	115	65	.....	.....
Rails(including mining rails and saw mill track) and ties, iron or steel, including fastenings, viz. splices railroad spikes, tie plates, track braces and track bolts, min. wt. 60,000 lbs.	110	65	.....	.....	125	.....	.....	.....
Resin, in barrels, min. C. L. wt. 40,000 lbs.	.....	50	.....	75	100	55	.....	.....
Rice, broken rice and brewers' rice, in packages, straight carloads, min. C.L.wt. 40,000 lbs.	110	60	120	75	110	65	.....	.....
Rice Flour, min. C. L. wt. 40,000 lbs.	.....	70	.....	80	.....	75	.....	.....
Rice Polish (rice dust), rice bran or rice hulls, in packages, straight or mixed, C. L. min. wt. 40,000 lbs.	110	60	120	75	110	65	.....	.....
Salt, min. C. L. wt. 40,000 lbs.	.....	.....	.....	.....	.....	60	.....	.....
Salt, in packages	.....	.....	.....	.....	100	.....	.....	.....
Sand Moulding, in packages,min. C. L. wt. 60,000 lbs.	.....	50	.....	.....	.....	.....	.....	.....
Sand, sand facing, flint sand and fire sand, min. C.L. wt. 60,000 lbs.	.....	.....	.....	.....	100	50	.....	.....
Sash weights and balance weights for folding beds and lounges; also counter weights, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	100	50	.....	.....
Seed: Alfalfa, beet, clover, grass hemp, mustard, rape, bird, timothy, millet and canary; kaffir corn seed, broom corn seed, also wheat, corn, popcorn, oats, peas and beans	.....	.....	.....	.....	145	120	150	125
Seed, flax, garden, sunflower and sorghum min. C. L. wt. 30,000 lbs.								
Seed flax, whole or ground, in packages, min. C. L. wt. 30,000 lbs.	145	120	150	125	145	120	150	125
Sheep Dip Liquid, min. C. L. wt. 30,000 lbs.	.....	60	.....	85	.....	65	.....	.....
Shingle Bands, iron or wire, in boxes or barrels, min. C. L. wt. 40,000 lbs.	.....	65	.....	80	.....	.....	.....	.....
Pitch and Tar, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	100	55	.....	.....
Silica (pulverized), or Silex in packages, min. C. L. wt. 60,000 lbs.	.....	50	.....	75	.....	.....	.....	.....
Soda Ash (may be shipped in sacks), soda crystals, caustic soda and hypo-sulphite nitrate (may be shipped in sacks), silicate(may be shipped in sacks) and sulphate of soda and chloride of lime, in kegs, boxes or iron drums, min. C. L. wt. 40,000 lbs.	.....	50	.....	75	110	55	.....	.....
Stone, rough, sawed or cut to dimension, not polished, min. C. L. wt. 40,000 lbs.	.....	60	.....	.....	.....	55	.....	.....

Statement Showing Differential Rates in Cents per 100 *lbs., etc.*—Continued.

Commodity	December 1, 1908				January 1, 1909			
	Morgan Line		All Rail		Morgan Line		All Rail	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Stoves (cast iron), cooking, heating (including stoves with cast iron tops and bottoms, or cast iron tops, bottoms and linings) or cast iron ends and linings; Laundry stoves; cast iron or steel ranges (with or without gas stove attachments), farmer's combination stoves with caldrons for same, min. C. L. (4987) wt. 30,000 lbs	.....	125	.....	135	.....	.....	.....	.....
Strawboard N. O. S., in crates or bundles, min. C. L. wt. 50,000 lbs	.....	50	.....	.....	.....	55	.....	.....
Syrup (corn, glucose, maple, and rock candy) and molasses, O. R. L., min. 30,000 lbs	.....	75	.....	90	.....	.....	.....	.....
Terra Cotta, Building, min C. L. wt. 30,000 lbs	.....	75	.....	80	.....	75	.....	80
Terra Cotta, Building, boxed or crated	100	.....	105	.....	.....	.....	.....	.....
Tile, Roofing, min. C. L. wt. 30,000 lbs	.....	70	.....	80	.....	70	.....	80
Wire (fence) barbed, including staples, steel stay guards and stretchers, min. C. L. wt. 40,000 lbs	110	65	125	80	.....	70	.....	85
Wire, iron, plain, galvanized, tinned or coppered (including if desired, steel stay guards), min. C. L. wt. 40,000 lbs	110	65	125	80	.....	70	.....	85
Rails (steel), including mining rails, cross ties (steel) and saw mill track, min. C. L. wt. 60,000 lbs	110	a$10.00	125	80	.....	a$11.00	.....	.....
Rail fastenings, viz.: Splices, steel clips or cross tie fastenings, railroad spikes, tie plates, track braces, track bolts and nuts and nutlocks, min. C. L. wt. 60,000 lbs	110	b$10.00	125	80	.....	b$11.00	.....	.....
Tin and terne plate (flat as from the mill, not further manufactured), in boxes, min. C. L. wt. 40,000 lbs	.....	55	.....	.....	.....	55	.....	.....

a Rate in cents per ton of 2,240 lbs.
b Rate in cents per ton of 2,000 lbs.

Authorities R. H. Countiss, I. C. C. 375-865-815.

"Q. Mr. White, I call your attention to the following testimony which you gave, page 887 of the printed record, referring to Complainant's Exhibit 84 and again to Complainant's Exhibit 83. 'Q. I show you Complainant's Exhibit 84, in three sheets. What does that show? A. That continues it down to the present time, showing the changes in effect on January 1, 1909. Q. That is, it continues Complainant's Exhibit 83 down to the present time, showing the changes made by the tariff which took effect January 1, 1909? A. Yes, sir. Q. How many items of commodities are there in this Exhibit 83, the rates on which on January 18, 1900, were less by the Mallory Line and the Morgan Line to New Orleans and Galveston and from those places by rail to the California terminals than by the all-rail lines? A. Approximately 65 up till 1901. Q. Now, since

1901, as shown by Exhibit 84, how many of those items have been changed until they are now the same? A. There are about twenty left in which the rates for the Morgan Line are lower than they are for the all-rail line.' " (4968) I recollect giving that testimony. I do not mean to convey the impression that during any single year between 1901 or 1900 and 1909 there were only twenty commodity rates by the broken service, ship-and-rail, that were less than by the all-rail lines—not at all. I just corrected my testimony now to that effect.

"Q. Does it not appear from your own exhibit, 83, that from January, 1900, to and including May 16, 1908, year by year, the commodity rates by the Morgan Line, which were lower than the all-rail lines, varied from 63 or 64 down to 98, never being less than 63? Does not that appear from your own exhibit? A. I couldn't tell without I count them up, no, sir. Q. Isn't it a fact also, or are you aware of the fact that in preparing your exhibit 83 you duplicated various items, and that, for instance, in the month of May, 1908, your exhibit shows 98 items, when in point of fact, duplication being canceled, there were only 79 items. Are you aware of the fact that your statement contains a number of errors of that kind? A. No, sir."

Peter.

(4968) WILBUR H. PETER

Statistics taken from railroad reports.

I am a junior clerk of the Interstate Commerce Commission in the Bureau of Statistics and Accounts under Professor H. C. Adams. I have been at work for a short time preparing figures from the reports of different railroad companies. (4969) The figures were not directly prepared under my direction, but indirectly; Mr. Burleigh in the office with me had the statement prepared by Mr. Morrow from the annual reports to the Commission. The statement, Defendants' Exhibit 213, stops at 1905 because the Commission has no reports for the steamers since that time, the S. F. & Portland S. S. Co. then taking over the line between S. F. and Portland. Exhibit 213 is as follows:

COMPLAINANT'S EXHIBIT 213.

(Peter)

INTERSTATE COMMERCE COMMISSION.

Washington.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of data in the original annual reports for the carrier named now on file with this Commission.

(4970) In testimony whereof I have hereunto subscribed my name, and affixed the seal of the Commission, this Thirtieth day of March, 1910.

(Sgd.) EDW. A. MOSELEY,
Secretary.

(Seal Interstate Commerce Commission. 1887.)

Statement compiled from the annual reports of the Oregon Railroad & Navigation Company to the Interstate Commerce Commission for the years ending June 30, 1905 to 1896, showing Miscellaneous Income from Ocean and River Steamers.

Year	Gross Income	Less Expenses	Net Miscellaneous Income
1905	$568,103.19	$583,667.74	a$15,564.55
1904	1,014,352.44	1,069,485.01	a55,132.57
1903	858,940.43	936,882.02	a77,941.59
1902	860,650.20	909,763.83	a49,113.63
1901	849,346.53	835,294.08	14,052.45
1900	839,277.80	795,530.23	43,747.57
1899	747,697.32	742,080.48	5,616.84
1898	902,922.35	766,542.23	136,380.12
1897b	463,808.55	456,241.86	7,566.69
1896c	576,164.00	775,216.79	a199,052.79

a Deficit.
b Figures shown are from the report of the Oregon Railroad & Navigation Company for the period August 18, 1896, to June 30, 1897. The report of E. McNeill, Receiver, Oregon Railway & Navigation Company for the period July 1, 1896, to August 17, 1896, shows additional net miscellaneous income of $6,624.10 from Ocean and River Lines.
c Figures from the report of E. McNeill, Receiver, Oregon Railway & Navigation Company.

Complainant's Exhibit 214 was prepared under my direction. The data assembled are from the annual reports filed with the Commission. This Exhibit will be found at pages 4972-4992 of the record, and is a series of tables. (4993) Exhibit 215 for Complainant shows operating revenues and expenses, ratio thereof, transportation expenses and ratio, and average yearly mileage operated—prepared under my supervision, and amalgamating main company and subsidiary lines for the system. This exhibit is set forth at pages 4993-5041, and is a series of tables.

(5042) Complainant's Exhibit 216, prepared under my direction, recapitulates the statement of maintenance of way and structures, maintenance of equipment, and average mileage operated during the year, for the same seven systems as in the other exhibit. 216 is set forth at pages 5042-5047, and is a series of recapitulations. (5047) "Q. I call your attention to the first exhibit that was offered in evidence on your examination, the statement with reference to the Oregon Railroad & Navigation Company. What ocean and river steamers are involved in that exhibit? A. The exhibit was prepared from the statement of miscellaneous income, as called for by the annual report form, but details respecting the exact lines represented were not required by that form during those years." I do not know what ocean and river steamers are involved in that exhibit; nor do I know what quantities in that exhibit are assignable to ocean steamers, and assignable upon the other hand to river steamers; nor what quantities in that exhibit are assignable upon the one hand to transcontinental business moving by ocean or river steamer, and business not transcontinental moving by either of those vehicles of transportation; nor what data go to make up the ultimate item "Gross Income"—no detail furnished. I do not know what data go to make

up the ultimate item "Expense." Referring to the second exhibit, the records from which that exhibit was compiled are reports to the Interstate Commerce Commission.

(5048) Referring to the detail attached to that exhibit for the S. P. and to what I mean by the expression in that detail, "California Northwestern Railway, Lessee:" As I remember that report, it was a report of the operation of certain mileage leased to a party—I don't remember the name. About 90 miles was leased. I don't know between what points. I gave certain data in respect to the California Northwestern Railway for the year ending June 30, 1906, and June 30, 1907; but not for the year ending June 30, 1909, and the year ending June 30, 1908; because as you will notice by foot-note No. 4, it states that the figures for 1907 for the California & Northwestern lines were for the six months ending December 31, 1906, consolidated with certain other companies forming the Northwestern Pacific Railway. I think I can get that out of a report I have of the Interstate Commerce Commission—the companies composing the Northwestern Pacific. That does not appear in the exhibit in question. I do not know whether the Northwestern Pacific was an S. P. property.

(5049) "Q. * * * I call your attention to a specific item in your exhibit—California Northwestern Railway, and I ask you if you are able to state the actual physical mileage to which the arithmetical expressions related to that company are assigned? A. In 1907, 20.03 miles;" and in 1906, 40.06. In respect to the California Northwestern Railway, Lessee, so described in my statement, the mileage to which these arithmetical expressions are assigned was 88.87 miles for the year 1907. That mileage, as I stated it, was the average mileage put upon a yearly basis. As I stated, the report was for six months, the first six months of the year, so that in aggregating all the data of the system for the year I only used one-half of the mileage actually operated. Take the Maricopa & Phoenix and Salt River Valley Railroad, the physical mileage to which my quantities are addressed in this statement was 42.51 miles; for the North Shore Railroad, the mileage from the same point of view was 45.25; and for the Maricopa & Phoenix Railway Company, the physical mileage to which these qualities are pointed was for the year 1909, 45.64 and for the year 1908, 43.26. The physical mileage assignable to the Independence & Monmouth Railway mentioned in the list was for 1909, 18.80. As to the physical mileage of the North Shore road: 1907 was the last appearance of that road, and it is 45.25, on the same basis as the California Northwestern line. The mileage of the Phoenix & Eastern Railway Company was for 1909, 95.26, and for 1908, 95.26. Take the Lake Charles & Northern Railroad Company (5050), from the same basis as I explained in reference to the California & Northwestern, the average mileage used was 44.48. That road began operations October 25, 1908. The mileage of the Arizona & Colorado Railroad Company, in 1909 was 35.35; the Coos Bay, Roseburg & Eastern Railroad & Navigation

Company, in 1909, 31.46; the Corvallis & Eastern, in 1909, 140.58; and the Gila Valley, Globe & Northern, in 1909, 125.41. Referring to the U. P.: The mileage of the Ilwaco Railroad, which is listed under the U. P. was in 1909, 28.65. And of the Oregon & Washington Railroad Company, similarly listed, on the same basis as the one I described for the California Northwestern, 3.05. "MR. SEVERANCE. Explain a little more fully what you mean by 'On the same basis.' WITNESS. That the report as rendered covered the operations for the six months ending June 30, 1909, and in assembling aggregate data for the system for the full year I used one-half of the mileage operated at the close of the year. Q. Basing on a six-months report? A. Yes, sir; the operations covering six months. Q. The Oregon, Washington & Idaho Railroad Company, the mileage for that? A. 72.03.

"Q. Did you make any comparisons with the annual reports of the Union Pacific and the Southern Pacific to the stockholders? A. Only in a general way." I am not prepared to say that precisely the same companies and all the same companies are included in the annual reports to the stockholders of the U. P. and S. P. companies, respectively, as I have included in my showing. "Q. Have you any knowledge as to whether the methods of the various railroads listed in your exhibits are absolutely identical in respect to their methods of accounting. A. I would assume that they were. Q. Well, is that a mere assumption upon your part as distinguished from any knowledge? A. They fall within the classifications prescribed. Q. Well, you are assuming it; you are not speaking of actual knowledge upon the subject, are you? (5051) A. There might be a question of jurisdiction of the Interstate Commerce Commission. Q. I am looking at this thing not from the legal but from an accounting point of view. I asked you whether you are prepared to say that the methods of these various companies are identical in respect to their accounting so far as the showing in your exhibits is concerned? A. Not having examined anything but the annual reports as filed, I cannot say positively." For instance, I cannot say that as among all of these companies listed in the exhibits the methods of accounting in respect of the depreciation of the equipment is identical. I have no knowledge of my own as to the quality and quantity of the articles of freight carried respectively by these various lines. My knowledge does not extend that far. I do not know what the ratio of carrying capacity to dead weight of refrigerator cars, for instance, would be as compared with box cars.

I do not know anything about the westbound movement of refrigerator cars with respect to quantity of load. As to the length of haul of these various companies—the average length of haul; the reports would show that item, but I don't carry it in my head. As to the average haul upon the S. P., for example, during the interval between 1901 and 1909, the same answer would apply—the reports would show it. (5052) I cannot tell as between 1901 and 1909 whether there was not an actual falling off in the earnings per ton

upon the S. P. I have no information about that. "Q. I omitted to ask you whether you are able to express to us the average haul of the Union Pacific as between 1909 and earlier years, say 1908. A. The annual reports would reveal this figure." I have not those annual reports with me here. They are on file in Washington.

"Q. You have mentioned various roads here—the Great Northern and the Northern Pacific, for instance; I think you even went outside of the United States to get a road—the Canadian Pacific. Now take the Great Northern. Do you know to what extent the Great Northern carries Grain and Ore tonnage, and carried it during the periods mentioned in these exhibits? A. The ratio of those commodities to the total tonnage reported as carried would be shown in the annual reports. Q. You have no expression of it here? A. Not in these exhibits. Q. Do you know to what extent freight cars are loaded, as to being fully loaded, with commodities of that description? A. No, sir. Q. Can you tell us what percentage grain and ore would average of the total tonnage for instance of the Great Northern or the Northern Pacific upon the one hand and upon the other the total tonnage of the Union Pacific or the Southern Pacific? A. If I understand your question, that same ratio would be expressed in the annual reports. Q. You have no expression of it available here? A. No, sir." I know nothing about the governmental relations of the Canadian Pacific in respect to pecuniary subventions and reliefs. From my general knowledge, as an employe of the Interstate Commerce Commission, I know that the Santa Fe has considerable mileage in the territory east of Kansas City. I do not know whether the operating cost is lower in that region than in the regions farther west. One of the factors in my exhibit is mileage; but actual location of the mileage is not shown in detail. (5053)

"Q. From your general knowledge as a member of the Interstate Commerce Commission staff, could you give us any expression of the relative percentages of total traffic in respect to grain, coal, stone, sand, cement, brick and lime obtaining upon the Southern Pacific Company on the one hand, and on the Santa Fe System upon the other, during the years comprehended in these exhibits? A. Those items are part of those called for in the annual report. Q. You have no expression here? A. No, sir. Q. Now, with respect to the ton mile rates here for the Southern Pacific Company. Was there any difference in the expression of the data from which those results are derived between the period prior to and including 1904 and the subsequent period, so far as those data exist in the sources from which you have compiled these exhibits? A. Yes, sir; I think there was. * * * (Witness refers to memoranda.) * * * Q. * * * Isn't it a fact that during the period prior to and including 1904, the tonnage reported by the Southern Pacific to the Interstate Commerce Commission and the data from which the ton mile rate was arrived at, included company freight as well as commercial freight, whereas since 1904 company freight was omitted? A. You speak

of the Southern Pacific Company itself? Q. Yes. A. Or as generalized for the whole system? Q. Take the Southern Pacific Company. A. In its report for 1904, the page calling for traffic statistics, as well as the detail of commodities, apparently included some three million and a half tons of freight marked 'Company.'

"Q. Don't you know, Mr. Peter, or do you carry it in your mind as a matter of your general information as an attache of the Interstate (5054) Commerce Commission, that up to and including 1904 the Southern Pacific company reported company freight, charging a very low rate for the movement thereof, and that after 1904 that was discontinued and the report was confined exclusively to commercial freight? Do you know that as a matter of general information? A. As to the lowness or highness of the rate I can make no answer. My memorandum shows that apparently was the case so far as the inclusion of tonnage was concerned." I am not able to say in respect to operating expenses whether the methods followed by the various lines listed in my exhibits were identical as to the items included in operating expenses; nor whether any of the lines mentioned in my exhibits—take the Hill lines, the G. N. and the N. P., and also the Santa Fe,—during the years mentioned in my exhibits, or any of these years, charged into operating expenses, arbitrarily, year by year, large sums for depreciation on existing equipment. "Q. Are you aware of the fact that no such charge was made by the Union Pacific and Southern Pacific during any of these years? A. I have no information on that point. Q. Do you know in respect to the various lines listed in these exhibits, whether the transportation charges were made up in the same way for each of these lines and for each of these years? A. I cannot answer."

In the years 1908 and 1909, and pursuant to a regulation of the Interstate Commerce Commission, a new division of operating expenses was erected, entitled "Traffic Expenses," which were formerly included under the head of "Transportation Expenses." "Q. In the earlier years listed in your exhibits, did you not include these traffic expenses, while in the later years you withdrew them from the transportation expenses? A. The item named 'Transportation Expenses,' represents the amount shown as reported under that head. The foot-note appended to it for 1908 and 1909 states that the classification in question became effective so as to cover those two years. Q. If there was such a regulation did you pursue it in making these computations? A. For the previous years? Q. And the subsequent years. A. I had no basis on which to make any combination of figures. Q. If pursuant to a regulation of the Commission the so-called traffic expenses for the years antedating 1907 were included in trans- (5055) portation expenses, and were subsequently to 1907 made assignable to another category, then for the years succeeding 1907 these traffic expenses were not included in the transportation expenses, were they? A. They were not. Q. Do you know whether the item of the hire of equipment did not constitute a heavy debit with the Southern Pacific and the Union

Pacific, or either of them, amounting to several millions of dollars up to and including 1908 and 1909? A. That item is also a feature of the annual report. Q. Well, apart from the amount of the item, do you know whether any regulation as to location of that item was established by the Interstate Commerce Commission, as to whether it was taken out of one category and moved into another? A. Yes, sir. The classification mentioned in the foot-note would cover that point, the item in question being transferred to income account. * * * As I remember, it was an item of transportation prior to 1907." My only source of information in making up these figures was the annual reports, as to the correctness of which I know nothing.

(5056) 1904 is the last S. P. report in which any memorandum appears relative to Company material. As to the item of average mileage, "I may add that in several cases where the report was for less than a full year, the road from its standpoint, it being a single reporting carrier, may have considered that its ratio as based upon that average would be more correctly stated by using the full mileage operated, the fact that it was for less than a full year being indicated by the fact that the report was for less than a full year. So, where that fact existed, in order to make the returns consistent, I used an average which on the basis of the other reports would represent the average mileage operated as reflected in the other side of the equation." The S. P. and U. P. subsidiary companies were taken from the statistics of railways in the United States, a publication of the Interstate Commerce Commission.

NEW YORK CITY, APRIL 6, 1910.

Tweed.

(5057) CHARLES H. TWEED.

Formerly Gen. Counsel of S. P.

I was general counsel of the S. P. from its organization until 1900, until my retirement, and Vice-President for part of the year 1900, my office being in the same corridor with the President, Mr. Huntington. Our relations concerning the S. P. business were very intimate, as intimate as such relations would be. (5058) Touching the offer, testified to by Mr. Kahn, by Mr. Harriman to Mr. Huntington to purchase the Central Pacific line, exclusive of the rest of the system, I have no recollection of such offer having come to my knowledge. I qualified as one of the executors of Mr. Huntington's will. The S. P. stock, given by the will to H. E. Huntington and Mrs. Huntington, in the proportions of one-third and two-thirds respectively, was sold in January or February, 1901, by the beneficiaries under subdivision 8 of the will. (5059) This will, Complainant's Exhibit 217, is set forth at pages 5059-5069 of the record.

Did not know of offer to purchase Central Pacific, alone.

(5069) FRANK M. MURPHY (2).

Murphy.

I have glanced hastily over the testimony of Mr. Ives. (5070) We had surveyed a line through the Gila Canyon, had engineers in there for several months, and surveyed a line clear through to Lordsburg, beginning in May, and finishing in December, 1903. It was in December, 1903, that we crossed to the north bank of the Gila, which caused the organization of the Arizona & Eastern, spoken of by Mr. Ives. Our purpose in the survey through the Gila Canyon was to get information in view of building a railroad, extending the Phoenix & Eastern to a connection with the Santa Fe at Deming. Later on, we ran a line through the Aravaipa Canyon, 10 or 12 miles up the San Pedro, on the proposed line to Benson; this latter canyon being parallel, generally speaking, with the Gila Canyon.

Surveyed line through Gila Canyon.

Contemplated extending P. & E. to Deming.

(5071) The proposed line to Benson followed the valley of the San Pedro. The Aravaipa Canyon led off to the east something like 10 or 12 miles south of Dudleyville, our purpose being to see whether we could find a feasible line through there less expensive than through the Gila Canyon. These surveys, which were not secret, were made on my order, as President of the Phoenix & Eastern, under authority from the President of the Santa Fe, at the expense of the Phoenix & Eastern. I caused a company to be incorporated to build through the Gila Canyon, I believe the name of it was the Gila River Railroad Company. (5072) "When we made our first survey, the first preliminary survey to Benson, it was a serious question which side of the river at the point below Kelvin we wanted to occupy, but we finally located on the south side. Later on, as we began to become better acquainted with the conditions, the resources of the country on the north side and the general conditions and the prospects of building the through line, we made a survey to see what the advantages would be in crossing to the north side of the river, and after careful study of the situation, we concluded that it was the wise thing to do and the proper thing to do. The expense of building the line to Benson would not be materially increased, and we would have a better alignment for the transcontinental line than we had in contemplation. * * *

Aravaipa Canyon.

Gila River Co.

Change to north side of river.

"There were many places that it was absolutely necessary to cut out the undergrowth or the mesquite or the brushwood that generally grows in bottoms like that, or on the hillside, otherwise you couldn't make your surveys. That was all done, that was all brushed out, and the road cut through, the line cut through and stakes set, and estimates furnished our office or furnished to the company as to the cost of construction, advisability, and when we decided to go to the north side we immediately took steps to amend our location that we were making to Benson, and transferred our graders and put men to work on this right of way. * * *

"The Arizona & Eastern was not organized until after we were working on the north side of the river. * * * It developed that there

Arizona & Eastern not organized until change of line was made.

had been a preliminary, incomplete map filed by the (5073) Arizona & Eastern in the Land Office at Tucson, some time in February, and was necessarily very incomplete because no surveys had been made. * * * When we learned that they had filed a temporary map, or a temporary map had been filed in Tucson, we naturally began to investigate where the data had come from, because we had men constantly occupying the ground and there had been no engineers in there; and it developed that certain parties had been over the road on horseback and foot, and that they had been seen taking the numbers from our stakes." This was developed in that hearing by the Secretary of the Interior. "There was lots of room left there for them to get into the canyon. We had not reached the mouth of the canyon or Dudleyville. If we had stopped there and had not gone through the canyon with the east and west road, had gone on to Benson, there would have been abundance of room there for them to go on and to build their road through the canyon." (5074) The S. P. lines reached within 25 or 30 miles of Dudleyville on the east. They had a line to Mesa. Dudleyville is about 80 miles from Tempe, which is 7 or 8 miles from Mesa, or 9. They did not begin construction work at that time westerly or easterly from San Carlos or Mesa. They were considerably above us in some points on this 18-mile strip. Before they appeared we had done a good deal of work on the north side—the heavy work, where we crossed from the south, we had practically covered with graders, and it was all rock work, and we had quite a large force in there.

Room left to get into canyon.

S. P. did not begin work at Mesa or San Carlos.

(5075) I first heard of the proposed line through Gila Canyon to Durango when the Arizona & Eastern filed its articles. "When I completed the Santa Fe, Prescott & Phoenix into Phoenix the Mesa people were very solicitous and anxious to get us to come up there and give them a railroad. They had no railroad facilities. I had about perfected arrangements to build to Mesa when I learned that the Southern Pacific or the Maricopa road, then owned by the Southern Pacific, had obtained the privilege of laying track in the public road from Tempe to Mesa, largely in the public road; and they did immediately build a very cheap road to Mesa which temporarily interfered with our going there." My associates and myself had not at that time sold the Santa Fe, Prescott & Phoenix to the Santa Fe. On this road to Mesa there was very little grading, in some places none, the ties right on the ground; second-hand material in ties and rails being used. In constructing the Phoenix & Eastern, we changed the specifications for the bridges crossing the Gila, and brought them up to the Santa Fe's latest standard to carry their heaviest motive power. The Phoenix & Eastern had a bridge across the Salt River at Tempe, put in pretty nearly a year after we commenced work, I haven't the dates exactly.

Construction of S. P., Tempe to Mesa.

P. & E. bridges.

(5076) Part of that bridge is still standing, I should judge three-quarters of it. The Southern Pacific uses its own bridge at Tempe, which it previously had on the Maricopa line—the Phoenix & Eastern now uses that bridge. The bridge originally constructed

by the Phoenix & Eastern was partly washed out, and the balance of it still remains. The Maricopa road used part of the line of the Phoenix & Eastern between Phoenix and the Salt River, Tempe being on the southerly bank. As to the Phoenix & Eastern being part of a transcontinental line, as well as going to Benson, the "matter was under consideration all the time, being discussed, and the engineers were exchanging views, Mr. Dunn and Mr. Drake, and we were also having the territory looked up west of Wickenburg, with the view of building the 200 miles that we have now nearly completed; it would be a part of that line." That is, north of Wickenburg to Bengal. "The estimates of what it would cost to reduce the grade at one or two points—all of those things were being considered, and we also had the country there carefully examined by different engineers, min- (5077) ing engineers, at the different places, to determine the traffic and conditions that we might expect. That was, I might say, a matter that was being discussed more or less from the start. But the final conclusion looking to the building of the through line was, as I remember it, somewhere about 1903, maybe in November or December, along there; that is, what I considered was the definite understanding that we were going to build through to a connection with the Santa Fe at Deming. * * * We changed the specifications of the two crossings of the Gila—that would be the main big bridges. The other features of the road were more or less secondary. They could be brought up to the standard at any time. * * *

The P. & E. as part of a transcontinental line.

Conclusion to build to Deming.

"In the winter of 1904 and the spring of 1905 we had very heavy floods in the Gila and our temporary bridges (we had not put steel bridges in across the Gila at that time) were washed out, and that prevented us getting up to the point where this washout took place, and when we did get there we found that the Gila River had changed its course and had cut out quite a large piece of farm land that was lying in between our track and the river, something that none of us had ever expected, and took a large part of our track with it. The Southern Pacific having some men at work up in the canyon and in close touch with that situation, they moved down there and appropriated the ground that we would have to move on if we wanted to get away from the river, took possession of it and started work on it. We were unable to get there and, in order to open up our train service through to the end of the line—it would be necessary for us either to trestle or fill and riprap the part that had gone out, or to litigate to get possession of that right of way, if we were to get it, or make some kind of a trade, some kind of a contract with them, and at that time these negotiations were on here in New York for the disposition of the Phoenix & Eastern to the Southern Pacific, and we had no difficulty in making a contract that was reasonably satisfactory, the Southern Pacific or Randolph reserving the right to annul it at any time in case the trade here, I suppose, that was on, had not gone through."

Gila river changed its course.

S. P. seizes advantage.

Made terms with S. P.

Interests of witness in Arizona.

(5078) The Santa Fe, Prescott & Phoenix is owned by the Santa Fe, but is a separate organization. My home is in Prescott, Arizona. I have interests in the Territory, merchandising, banking, some other railroad interests, mining and smelting, and a couple of hotels on my hands—a few little things like that.

P. & E. began construction in 1901.

The Phoenix & Eastern Company was organized in August, 1901, and began actual construction, it seems to me, in October, 1901. I would like to look at the records for it. Construction began at Phoenix. In May, 1903, about 70 miles had been built I should think. I don't know that trains were running at that time. I don't think the road was open for operation. We were operating

Operating trains to Florence.

trains as you would in construction. We were operating trains to Florence, probably 60 miles. We had track laid all of the 60 miles. I would not be so sure, though, if we had every foot of it covered for the extreme 70 miles. I don't know but 70 miles would carry us across the Gila River. I don't think we had our big bridge completed at that time. "Q. When did you first make a survey of any kind or character, good, bad or indifferent, in the Gila canyon? (5079) A. The engineers were in there in May, 1903, and finished before December, 1903." We filed a profile or map of location for the canyon in April, I think it was; in April, 1904.

Survey of Gila Canyon.

"Q. Now, I will ask you again the question whether at any time prior to May, 1903, you ever made a survey of any kind, and whether prior to April, 1904, you ever filed a profile and map of location in reference to the Gila canyon? A. To your first question I will say to you that I made a reconnoissance in 1897, I think it was—1897 or 1898—with Mr. Drake, our chief engineer, to Globe, before the railroad was sold to the Santa Fe, with a view of getting an eastern outlet. Q. In 1897? A. In 1897; and that I also had negotiations on with Mr. Garland to buy the Gila Valley, Globe & Northern before the Southern Pacific got it, with a view of getting an eastern outlet. Q. Now, I will ask you again, did the Phoenix & Eastern Railroad Company at any time prior to May, 1903—did that corporation make any survey of any kind of the Gila canyon? A. Prior to 1903? Q. Prior to May, 1903. A. Well, what do you call the Gila canyon now? If you are talking about the Gila canyon from Dudleyville east, I think I would safely say no; but if you call the Gila canyon the point where we crossed from the south side of the river to the north side there, I would say yes. Q. No, sir, I am not speaking of that. You testified upon your direct examination that in May, 1903, you made a survey in the canyon. A. I think if you will say beginning some time about May and completed by December, 1903. Q. What canyon was that? A. Gila canyon.

"Q. Did the Phoenix & Eastern Railroad ever make a survey of that canyon prior to that time? A. No, sir, not the Phoenix & Eastern, only that I authorized it as president of the Phoenix & Eastern." The Phoenix & Eastern never filed a profile on that road; the Phoenix & Eastern never did, but the Phoenix & Eastern

brought about the incorporation of the Gila River Railroad, and that company filed its articles. I think the latter company was incorporated in April, 1904. (5080) In my direct testimony I said that I was not expecting any opposition. That language was not used in reference to the filing of a profile or map of location by the Arizona & Eastern. "It had been claimed, as I read Mr. Ives' testimony, that they had had it in their mind for a great many years to build a railroad up to the canyon, and no one in Arizona, as far as I knew, had heard anything of it; and we were building a railroad, and we had built 70 or 80 miles of a railroad undisturbed, and we, naturally, not knowing of anybody else in the business, or thinking of appropriating that territory, were not expecting any trouble. Q. Then, up to the time that the Phoenix & Eastern Railroad had constructed 70 miles of road you were not expecting any opposition? Isn't that the fact? A. Pretty much so, yes, sir."

Gila River Railroad incorporated April, 1904.

Built 70 miles undisturbed.

Was not expecting trouble.

At the time I crossed over from the south bank to the north bank I was acting in the interest of the Santa Fe. The Phoenix & Eastern and the Santa Fe directly. Of course if you connect it up, I was president of the Phoenix & Eastern road, and that was controlled by the Santa Fe. When we first started the Phoenix & Eastern, the point of origin being Phoenix—when I first started the road, within my limited ability, I had contemplated going to Benson. This litigation that Mr. Severance speaks of, was a litigation between that very Phoenix & Eastern Company and the Arizona & Eastern Company.

P. & E. contemplated building to Benson.

"Q. Now, in that litigation did you testify as follows: 'I had something to do with the making of the change of the route of the company's road from the south side of the Gila River in Pinal County at a point about two miles west of Kelvin to the north side of said river. The change was authorized by me. We were progressing with our work up the Gila and were making numerous observations and a study of the country. We were confronted with the fact that our alignment (5081) on the south side contained considerable heavy curvature. From our observation and investigation it was apparent to the company and to myself as its president and the other directors that we would best serve the public by crossing the river to the north side and running on that side to a point near or opposite Dudleyville, as it was on the north side of the river that the largest mining interests were known to exist. It was represented to us and understood by us that that section of the country could not very well be supplied when the river was up, for the river at times was impassable. I ordered an investigation of the facts by the Chief Engineer based upon information that we had been able to obtain and on the report of the engineer that we had examined the country to see whether it was the proper thing for us to do, all things considered, in serving the people there and in getting a good line. The investigation was made and communicated to me as to what could be done and what we could get in the way of a line as well as the advantages from a purely railroad point of view in undertaking to serve the country through there. As presi-

Testimony of witness as to change in line.

dent of the company I immediately ordered Mr. Drake to make a preliminary survey. This preliminary survey was made to verify the conclusions that we had reached. Mr. Drake made that survey and communicated the results to me and as president of the company I instructed him to adopt that line and proceed with the construction on the north side.' Did you give that testimony under oath? A. I think I did. Q. Was it true? A. I think so. Absolutely true—all things considered there. That means a good deal."

Testimony was true.

(TESTIMONY RESUMED, NEW YORK CITY, APRIL 8, 1910.)

U. P. statistics.

"MR. SEVERANCE. The following statement is introduced, subject to the right of the Defendants to file a corrected statement if, upon checking the same, the figures herein stated are found to be incorrect: The annual report of the Union Pacific Railroad Company for 1900 shows the average mileage operated to be 2,923.45. The said report also shows the number of passengers carried per mile of road was 70,098, or a total of 204,927,998 passengers carried 1 mile. Mr. Mohler testified (page 4202, printed record) that the passenger train mileage between Council Bluffs and Ogden, in 1900, was 2,597,450. He further testified (same page) that in 1909 the passenger train mileage on the Union Pacific between Council Bluffs and Ogden was 4,400,949; and it appears by the statistics introduced (5082) in connection with Mr. Peter's testimony that in 1909, the entire railroad of the Union Pacific carried 496,120,209 passengers 1 mile. MR. SEVERANCE. I offer in evidence Complainant's Exhibit 218, being a statement relative to dividends on Oregon Short Line Railroad Company's stock January 1, 1901, to March 31, 1910, prepared by the Defendants at the request of Complainant," as follows:

COMPLAINANT'S EXHIBIT 218.

O. S. L. dividends paid U. P.

"Statement giving the rate and aggregate amount of dividends paid the Union Pacific Railroad Co. as stockholder of the Oregon Short Line Railroad Co. since declaration of 50 per cent. dividend. No statement giving the rate and the aggregate amount of dividends whether declared and paid semi-annually or annually can be made in respect to the Oregon Short Line Railroad Co. as has been furnished in respect to the Oregon Railroad & Navigation Co., for the reason that from the year 1897 to and including September 1, 1906, the date of the so-called 50 per cent. dividend, no dividends were declared or paid on the stock of the Oregon Short Line Railroad Co., which is exclusively common stock. On September 1, 1906, the distribution at the rate of 50 per cent. on the common stock of the Oregon Short Line Railroad Co. was made out of the accumulated surplus from March 16, 1897, to June 30, 1906, the same being paid on September 1, 1906, this being the so-called 50 per cent. dividend. Similar distributions from the accumulated surplus were paid February 14, 1907, August 8, 1907, November 14,

1907, June 15, 1908, and June 30, 1909, in the proportion respectively of 10, 20, 10, 100 and 25 per cent. aggregating respectively, $2,734,070, $5,468,140, $2,735,070, $27,350,700 and $6,837,675. These distributions from the accumulated surplus included, in addition to transportation earnings, the income from investments and from sources other than from transportation earnings, but the expression of this distribution in the proportions above mentioned was not accompanied by any separation of items in respect to the sources from which the accumulated surplus was derived, and for that reason no segregation was made in this statement.

UNION PACIFIC RAILROAD CO.

Dividends received on stock owned of Oregon Short Line Railroad Company from January 1, 1901, to March 31, 1910, inclusive.

Date	Rate per cent.	Amount
Feb. 14, 1907	10	$2,734,070
Aug. 8, 1907	20	5,468,140
Nov. 14, 1907	10	2,735,070
June 15, 1908	100	27,350,700
June 30, 1909	25	6,837,675
Total		$45,125,655

(5083) "MR. SEVERANCE. I offer in evidence Complainant's Exhibit 219, being statement of dividends on stock of Oregon Railroad & Navigation Company, owned by the Union Pacific Railroad Company and the Oregon Short Line Railroad Company from July 1, 1901, to date, prepared by the Defendants at request of Complainant," as follows:

COMPLAINANT'S EXHIBIT 219.

O. R. & N. dividends paid U. P.

"Statement giving the rate and aggregate amount of dividends paid the Union Pacific Railroad Co. as stockholder of the Oregon Railroad & Navigation Co. since 1901. The Union Pacific Railroad Co. received no dividends on stocks of the Oregon Railroad & Navigation Co. subsequently to January 3, 1905. Thereafter such stocks were held by the Oregon Short Line Railroad Co. From 1901 to 1905 the Union Pacific Railroad Co. was paid no dividends on its holdings of common stock of the Oregon Railroad & Navigation Co., no dividends on the common stock of that Company having been declared or paid. Semi-annual dividends at the rate of 2 per cent. on the preferred stock of the Oregon Railroad & Navigation Co. were paid to the Union Pacific Railroad Co., beginning July 1, 1901, and ending January 3, 1905, and the aggregate amount thereof was $1,581,378.

UNION PACIFIC RAILROAD CO.

Dividends received on stock owned of The Oregon Railroad & Navigation Co. from January 1, 1901, to March 31, 1910, inclusive.

RECEIVED BY UNION PACIFIC RAILROAD CO.

Date	Rate	Preferred stock]	Common stock
July 1, 1901	2%	$197,536.00	None.
Jan. 2, 1902	2%	197,642.00	"
July 1, 1902	2%	197,676.00	"
Jan. 2, 1903	2%	197,692.00	"
July 1, 1903	2%	197,708.00	"
Jan. 2, 1904	2%	197,708.00	"
July 1, 1904	2%	197,708.00	"
Jan. 3, 1905	2%	197,708.00	"
		$1,581,378.00	"

(5084)

Amount of dividends received by Oregon Short Line Railroad Co. on stocks owned of The Oregon Railroad & Navigation Co. from July 1, 1901, to February 24, 1910, inclusive.

Date	Rate	Preferred stock	Common stock
July 1, 1901	2%	$19,538.00	.....
Jan. 2, 1902	2%	19,538.00	.....
July 1, 1902	2%	19,538.00	.....
Jan. 2, 1903	2%	19,538.00	.....
July 1, 1903	2%	19,538.00	.....
Jan. 2, 1904	2%	19,538.00	.....
July 1, 1904	2%	19,538.00	.....
Jan. 3, 1905	2%	217,336.00	.....
July 1, 1905	2%	217,384.00	.....
Jan. 2, 1906	2%	217,384.00	.....
July 1, 1906	2%	217,384.00	.....
Jan. 2, 1907	2%	217,420.00	.....
July 1, 1907	2%	217,450.00	.....
Jan. 2, 1908	77%	8,372,595.00	.....
Feb. 20, 1908	79%	.....	$18,943,803.00
Feb. 20, 1908	12½%	1,359,200.00	2,997,425.00
Feb. 20, 1909	2%	217,472.00	.....
Aug. 2, 1909	2%	217,472.00	.....
Feb. 3, 1910	11%	1,196,096.00	.....
Feb. 24, 1910	15%	.....	3,596,910.00
Feb. 24, 1910			
Total		$12,823,497.00	$25,538,138.00

"MR. SEVERANCE. It is stipulated that the defendant E. H. Harriman died in September, 1909, and Robert S. Lovett has been elected President of the defendant Southern Pacific Company, the defendant Union Pacific Railroad Company, the defendant Oregon Short Line Railroad Company, the defendant Oregon Railroad & Navigation Company, and Chairman of the Executive Committee of each of said companies. MR. SEVERANCE. It is stipulated that since the commencement of the taking of testimony in this case the defendant Henry H. Rogers has died. MR. SEVERANCE. The Complainant now rests. THE SPECIAL EXAMINER. What have the Defendants to say? MR. DUNNE. The Defendants rest, subject to the right to put in a correcting statement in respect to the statements offered this morning by the complainant."

TESTIMONY CLOSED.

CHARTS

TOO LARGE FOR FILMING

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Peter, Wilbur H.	940	XI	4968
Philipp, Emanuel L.	240	IV	1783
Phillips, Thomas H.	71	II	730
Pister, William	197	IV	1560
Plaisted, Frank H.	764	X	4609
Prentice, E. H.	439	VII	3063
Pursel, J. T.	197	IV	1555
R.			
Rand, W. F.	206	IV	1606
Ray, W. S.	454	VII	3130
Reeves, John A.	771	X	4624
Reicke, Louis	320	V	2350
Rheinstrom, Abraham	191	IV	1518
Richards, H. W.	265	V	1925
Richardson, G. F.	705	X	4454
Riter, William W.	359	VI	2593
Rolph, W. N.	445	VII	3090
Romney, Orson D.	367	VI	2620
Root, Thomas E.	316	V	2327
Rosenberg, Abraham	452	VII	3118
Rossbottom, T. H.	469	VII	3287
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Sanborn, W. D.	441	VII	3074
Schiff, Jacob	125	III	1076
Schoenhard, L. P.	318	V	2339
Schwerin, R. P.	214	IV	1656
Scott, A. L.	427	VII	2995
Settle, T. B.	447	VII	3100
Shepard, A. D.	434	VII	3039
Shewalter, W. E.	193	IV	1532
Shotwell, W. J.	54	II	565
Smith, George T.	108	III	935
Smith, Harry C.	187	IV	1478
Snape, Thomas	170	III	1346
Spence, Lewis J.	544	IX	3987
Spreckels, John D.	53	II	553
Stebbins, C. S. (1)	256	IV	1865
Stebbins, C. S. (2)	736	X	4555
Stebbins, C. S. (3)	885	XI	4883
Stewart, O. J.	212	IV	1640
Stubbs, J. C. (1)	15	I	290
Stubbs, J. C. (2)	274	V	1990
Stubbs, J. C. (3)	487	IX	3890
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Sweek, Thad	383	VI	2707
Swingley, C. W.	314	V	2313
Swope, Charlton A.	124	III	1068
T.			
Taylor, S. Frederick	112	III	963
Thomson, R. H.	176	III	1388
Thorne, W. V. S.	14	I	284
Throckmorton, Charles Whitney	101	II	900
Toll, H. G.	418	VII	2948
Townsend, J. F.	164	III	1302
Tweed, Charles H.	946	XI	5052
U.			
Ulmer, Fred D.	349	VI	2530
V.			
Van Persyn, Martin	259	IV	1892
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Vosmer, George W.	195	IV	1543
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Wait, J. J.	268	V	1939
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Watkins, A. A.	430	VII	3011
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West, J. L.	312	V	2303

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Whittemore, Charles O	460	VII	3145
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Wilde, W. W.	393	VI	2774
Wilkison, J. E.	211	IV	1637
Williams, J. P.	438	VII	3060
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Wilmore, E. C.	269	V	1943
Wolff, Julius	451	VII	3115
Wood, C. E. S.	406	VI	2862
Woodford, B. A.	72	II	736
Woodside, S. P.	174	III	1379
Wratten, Edward L.	250	IV	1844
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Younge, Jacob	243	IV	1795

COMPLAINANT'S EXHIBITS.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Printed record. Page.
		Bold face type indicates Exhibit set out in full.			
1	Millar	List of directors and executive committee of Union Pacific, list of executive committees of Southern Pacific, Oregon Short Line R. R. Co., and Oregon R. R. and Navigation Co.	3	I	8
2	... do	Statement, date of annual meeting Southern Pacific Co., number of shares of stock voted, number of shares of each class of stock owned by Union Pacific or Oregon Short Line.	3	I	18
3	... do	By-laws of Union Pacific R. R. Co. in effect Jan. 7, 1904.	3	I	21
4	... do	By-laws of Union Pacific R. R. Co. as amended Oct. 4, 1906.	3	I	32
5	... do	By-laws of Oregon Short Line R. R. Co. Mar., 1897.	3	I	36
6	... do	By-laws Oregon Short Line R. R. Co. as amended Oct. 10, 1906.	3	I	39
7	... do	By-laws Oregon R. R. and Navigation Co. as amended Oct. 10, 1906.	3	I	42
8	... do	By-laws Southern Pacific Co. as amended June 9, 1904.	3	I	46
9	... do	By-laws Southern Pacific R. R. Co. adopted Mar. 24, 1902, amended Jan. 6, 1904, Mar. 2. 1905, and Nov. 2, 1905.	3	I	48
10	... do	Union Pacific form of proxy, 1900	3	I	52
11	... do	Southern Pacific form of proxy, Apr., 1902.	3	I	52
12	... do	Southern Pacific form of proxy, Apr., 1903.	3	I	53
13	... do	Southern Pacific form of proxy, annual meeting, Apr. 6. 1904.	3	I	53
14	... do	Southern Pacific form of proxy, annual meeting, Apr. 5, 1905.	3	I	54
15	... do	Southern Pacific form of proxy, annual meeting Apr. 4. 1906.	3	I	55
16	... do	Resolution Union Pacific board of directors, Aug. 29, 1899, Oregon Short Line stock and including bonds and Oregon R. R. and Navigation stocks—Acquisition of Short Line and Navigation securities.	4	I	58
17	... do	Certified copy resolution Union Pacific board of directors, Feb. 20, 1901.—Purchase of Southern Pacific Co. stock and issue of Union Pacific convertible 4 per cent bonds, etc.	4	I	63

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
18	Millar	Certified copy of resolution Union Pacific board of directors, Jan. 31, 1901.—Securities of other companies.	4	I	72
19	... do	Certified copy executive committee Union Pacific R. R. Co., Dec. 13, 1906. — Equipment association organization.	4	I	74
20	... do	Certified copy executive committee Union Pacific R. R. Co., Dec. 13, 1906.—Pacific Fruit Express Co. organization.	4	I	75
21	... do	Certified copy executive committee Oregon Short Line R. R. Co., Mar. 13, 1903.—Authority to sell Southern Pacific stock.	4	I	76
22	... do	Certified copy executive committee Oregon Short Line R. R. Co., Mar. 11. 1903. — Purchase of Southern Pacific stock.	4	I	77
23	... do	Certified copy meeting directors Nov. 12, 1903, Oregon Short Line R. R. Co.—Sale and purchase of Southern Pacific stock.	4	I	78
24	... do	Certified copy meeting executive committee Union Pacific R. R. Co., Mar. 11, 1903.—Release of Southern Pacific stock from first-lien mortgage.	4	I	79
25	... do	Certified copy meeting executive committee Union Pacific R. R. Co., Mar. 11, 1903.—Release of Southern Pacific stock from first-lien mortgage.	5	I	80
26	... do	Certified copy directors' meeting Union Pacific R. R. Co., Feb. 26, 1902.—Sale of stocks of Oregon Short Line.	5	I	81
27	... do	Certified copy executive committee meeting Union Pacific R. R. Co., Mar. 11, 1903.—Sale of Southern Pacific stock to Short Line.	5	I	82
28	... do	Certified copy executive committee meeting Union Pacific R. R. Co., Mar. 11, 1903.—Release of Oregon R. R. and Navigation Co. stock from Short Line, Income B mortgage.	5	I	83
29	... do	Certified copy executive committee meeting Union Pacific R. R. Co., July 17, 1902.—Correspondence with Kuhn, Loeb & Co. re Oregon Short Line participating bonds.	5	I	84
30	... do	Certified copy stockholders' meeting Oregon Short Line R. R. Co., Oct. 14, 1903.—Approval of San Pedro agreements, conveyances, etc.	5	I	86

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
31	Millar	Stock trust agreement between William A. Clark individually and as trustee, Edward H. Harriman as trustee, and the Farmers Loan and Trust Co.	5	I	109
32	... do	Traffic agreement between Oregon Short Line R. R. Co., San Pedro, Los Angeles and Salt Lake R. R. Co., and Union Pacific R. R. Co.	5	I	122
33	... do	Traffic agreement between Southern Pacific Co. and San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	137
34	... do	Deed, Leamington cut-off, Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	140
35	... do	Agreement between Oregon Short Line R. R. Co., San Pedro, Los Angeles and Salt Lake R. R. Co., and Union Pacific R. R. Co.—Guaranty of Union Pacific R. R. Co. to release lien of present and future holdings of Income A or Income B bonds.	5	I	143
36	... do	Lease, Southern Pacific Co. and Southern Pacific R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.—Riverside to San Bernardino.	5	I	145
37	... do	Deed, lines south of Salt Lake City.—Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	155
38	... do	Deed, terminus branch.—Oregon Short Line R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	162
39	... do	Salt Lake yard contract, Oregon Short Line R. R. Co. and San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	165
40	... do	Deed.—Utah and Pacific R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	182
41	... do	Deed.—Utah, Nevada and California R. R. Co. to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	185
42	... do	Deed.—New East Tintic Railway Company to San Pedro, Los Angeles and Salt Lake R. R. Co.	5	I	187
43	... do	Certified copy meeting executive committee Oregon Short Line R R. Co., Aug. 18, 1904.—Subscription to Southern Pacific preferred stock.	7	I	194

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
44	Millar	Certified copy meeting executive committee Oregon Short Line R. R. Co., Mar. 9, 1905.—Purchase of Oregon R. R. and Navigation Co. stock.	7	I	195
45	... do	Pension system, Union Pacific R. R. Co., Jan. 1, 1903.	7	I	196
46	... do	Certified copy meeting board of directors Union Pacific R. R. Co. Apr. 10, 1906.—Amendment to pension rules.	7	I	204
47	... do	Letter from J. C. Stubbs to E. H. Harriman, July 6, 1905.—Advertising.	8	I	210
48–54	... do	Requests for proxies under stock-trust agreement between Wm. A. Clark, individually and as trustee, and E. H. Harriman as trustee.	8	I	211-217
55	... do	Letter.—Wm. Rockefeller to E. H. Harriman, Nov. 5, 1903.	8	I	217
56	Mahl	Union Pacific R. R. Co.—Statement common capital stock authorized, issued, and outstanding Dec. 31, 1906.	10	I	234
57	... do	Union Pacific R. R.—Statement preferred capital stock authorized, issued, and oustanding Dec. 31, 1906.	10	I	234
58	... do	Oregon R. R. and Navigation Co.—Statement showing holdings of Portland and Asiatic S. S. Co. stock Jan. 5, 1907.	11	I	247
59	... do	Oregon Short Line R. R. Co.—Statement showing holdings of Southern Pacific Co. common and preferred stock Jan. 5, 1907.	11	I	248
60	... do	Union Pacific R. R. Co.—Annual report for year ending June 30, 1906.	11	I	249
61	... do	Statement submitted to board of directors Union Pacific R. R. Co. at meeting Aug. 15, 1906.	11	I	251
62	... do	Statement of purchase and sale of Northern Securities Co. stock and the substituted Northern Pacific and Great Northern stock.	11	I	256
63	... do	Statement of purchase by Oregon Short Line of Northern Pacific purchase money certificates.	11	I	257
64	... do	Resolution board of directors Union Pacific R. R. Co., Jan. 31, 1901.—Provision for financial requirements.	11	I	258
65	... do	Proceedings executive committee Union Pacific R. R. Co., Mar., 1903. — Amounts loaned and amounts borrowed.	12	I	260

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
66	Mahl	Statement showing dates and amounts received from sale of Union Pacific convertible 4 per cent gold bonds.	12	I	261
67	... do	Union Pacific System.—Condensed statement of operations, five months ending Nov. 30, 1901.	12	I	263
68	... do	Statement of stocks deposited Mar. 9, 1905, with Equitable Trust Co. under collateral trust mortgage of Oregon Short Line R. R. Co.	12	I	264
69	... do	Oregon Short Line R. R. Co.—Condensed statement of operations from July 1, 1897, to June 30, 1906.	12	I	264
70	... do	Oregon Short Line R. R. Co.—Statement showing issue and sale of 4 per cent and participating bonds.	12	I	265
71	... do	Oregon Short Line R. R. Co.—Statement showing sale of 4 per cent refunding bonds.	12	I	265
72	... do	Statement showing operating surplus at the time the $100,000,000 stock issue was authorized by Union Pacific R. R. Co., showing resources from Feb. 28, 1901, (when stock issue was authorized), to June 30, 1901, and how applied.	12	I	266
73	Cornish	Union Pacific R. R. Co.—Circular re first lien convertible 4 per cent gold bonds, Feb. 13, 1901.	14	I	279
74	Stubbs (1)..	List of joint Union Pacific and Southern Pacific agents.	19	II	318
75	Payson	Agreement between Southern Pacific Co. and Atchison, Topeka and Santa Fe Ry. Co., Dec. 7, 1906, relating to various railways in northwestern California.	52	II	530
76	... do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and Northwestern Pacific Ry. Co., for sale to the Northwestern Pacific Ry. Co., etc., Dec. 7, 1906.	52	II	534
77	... do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and Northwestern Pacific R. R. Co., Mar. 12, 1907, giving right to prevent default under mortgages.	52	II	539
78	... do	Agreement between Southern Pacific Co., Atchison, Topeka and Santa Fe Ry. Co., and the Farmers Loan and Trust Co., Mar. 30, 1907, relating to stock of the Northwestern Pacific R. R. Co.	52	II	542

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
.....	Exhibit 1 (Clark) ...	San Pedro, Los Angeles and Salt Lake R. R. Co. and W. A. Clark's Exhibit 1 (Clark), San Pedro, Los Angeles and Salt Lake R. R. Co. class rates between Los Angeles and Utah common points.	62	II	669
79	Clark	List of members of board of directors San Pedro Co., July 1, 1903.	62	II	672
80	Wells	Carloads of citrus fruit handled season of 1905-6, Nov. 1, 1905, to Oct. 31, 1906.	71	II	729
81A	White (1) (I. C. C.)..	Statement showing class and commodity rates in effect June 24, 1897, to date, from and to various points named.	98	II	866
81B	... do	Statement showing class and commodity rates from Jan. 10, 1898, to date, from and to various points named.	98	II	868
81C	... do	Statement showing class rates, all-rail, from Colorado common points to New York, Jan. 1, 1898. to date.	98	II	870
81D	... do	Statement showing class rates, from Colorado common points via Gulf routes to New York, May 12, 1897, to date.	98	II	872
81E	... do	Footnotes to complainant's Exhibit 81-D.	98	II	873
81F	... do	Statement showing commodity rates from various points named to California terminals supplementary to statement showing class and commodity rates from New York, etc., to Pacific coast terminals, as per statement No. 1519.	98	II	875
81G	... do	Comparative statement showing changes in eastbound transcontinental freight rates, taking effect Jan. 1, 1909.	98	II	877
81H	... do	Comparative statement showing changes in westbound transcontinental freight rates, taking effect Jan. 1, 1909.	98	II	878
81I	... do	Continuation of 81-H.....	98	II	879
81J	... do	Comparative statement showing changes in class and commodity rates from San Francisco, Cal., to Portland, Ore., Feb. 10, 1898, to July 1, 1908.	98	II	880
81K	... do	Comparative statement showing changes in class and commodity rates from Portland, Ore., to San Francisco, Cal., Feb. 10, 1898, to July 1, 1908.	98	II	881
82A	... do	Statement showing first and second class passenger fares from and to points named.	98	II	882

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
82B	White (1) (I. C. C.)..	Statement showing first and second class passenger fares from and to points named (continued from complainant's Exhibit 82-A).	98	II	882
82C	... do	Statement showing first and second class passenger fares from and to points named (continued from complainant's Exhibit 82-B).	99	II	882
82D	... do	Rates from Puget Sound points to New York, Harrisburg, Pittsburg, Cincinnati, St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs, and Pueblo via various routes.	99	II	882
82E	... do	Statement showing first and second class passenger fares from and to points named.	99	II	882
82F	... do	Class rates from St. Louis, Chicago, Kansas City, Omaha, Denver, Colorado Springs, and Pueblo, to Los Angeles, San Francisco, and Portland via various routes.	99	II	882
82G	... do	Passenger rates from New York to Los Angeles, San Francisco, Portland, and Puget Sound points, etc.	99	II	882
82H	... do	Passenger rates from New York to San Francisco, Los Angeles, Portland and Puget Sound points via different routes.	99	II	882
82I	... do	Passenger rates from Harrisburg, Pa., to Los Angeles, San Francisco, and Portland, etc., via various routes.	99	II	882
82J	... do	Passenger rates from Harrisburg, Pa., to San Francisco, Los Angeles, Portland, and Puget Sound via certain routes.	99	II	882
82K	... do	Passenger rates from Pittsburg, Pa., to San Francisco, Los Angeles, Portland, and Puget Sound points via certain routes.	99	II	882
82L	... do	List of rate sheets from which passenger rates are quoted.	99	II	882
83	... do	Statement showing rates on various commodities from New York to California terminals; Morgan Line (via New Orleans), and Mallory Line (via Galveston), and other lines.	99	II	884
84	... do	Statement showing rates on various commodities from New York, N. Y., to California terminals; Morgan Line (via New Orleans), and Mallory Line (via Galveston), and other lines, in effect prior to Jan. 1, 1909, and in effect Jan. 1, 1909.	99	II	888

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record.	
				Vol.	Page.
85	White (1) (I. C. C.)..	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Hamburg, Germany, to Seattle, Wash., on 25 cases earthenware.	99	II	891
86	... do	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 100 cases champagne.	99	II	892
87	... do	Joint freight tariff, Illinois Central R. R. Co., from Bordeaux, France, to San Francisco, on 50 cases wines.	100	II	893
88	... do	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 180 cases mineral water and 580 cases of window glass.	100	II	894
89	... do	Joint freight tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from Antwerp, Belgium, to San Francisco, on 238 cases mineral water.	100	II	895
90	... do	Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Oregon Short Line R. R. Co., from Antwerp, Belgium, to Pueblo, Denver, San Francisco, Salt Lake City, on cases of window glass, crockery, toys.	100	II	896
91	... do	Joint tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and Southern Railway Co., from Antwerp, Belgium, to Oakland and San Francisco, on cases of wash blue and window glass.	100	II	897
92	... do	Joint freight tariff, Illinois Central R. R., Union Pacific R. R., and Southern Pacific R. R. companies, from Hamburg, Germany, to San Francisco, on 400 bundles rattan.	100	II	898
93	... do	Joint freight tariff, Illinois Central R. R. Co., Union Pacific R. R. Co., and San Pedro, Los Angeles and Salt Lake R. R. Co., from Hamburg, Germany, to San Francisco, on 400 bundles of rattan.	100	II	899
94	... do	Tariff, Illinois Central R. R. Co. and Union Pacific R. R. Co., from London, England, to Salt Lake City, Denver, San Francisco, on certain packages of beer and tea.	100	II	899A
95	... do	Joint freight tariff, Illinois Central R. R. Co. and other railroads named, from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle or istle.	100	II	899B

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
96	White (1) (I. C. C.)	Joint freight tariff, Illinois Central R. R. and other railroads named, from Progreso, Yucatan, to San Francisco, Portland, Seattle, and Tacoma, on sisal, ixtle, or istle.	100	II	899C
97	... do	Map showing Missouri River, Mississippi River, Chicago, Cincinnati-Detroit, Pittsburg-Buffalo, New York-Boston, and common points territory.	100	II	899D
98	Blye	Statement covering California traffic from New York City via trunk lines and Gulf lines, from June 18, 1883, to Mar. 31, 1902.	111	III	951
99	Deming	Proceedings, meeting of directors Atchison, Topeka and Santa Fe Ry. Co., New York, Feb. 18, 1905.	113	III	968
100	... do	Proceedings, annual stockholders' meeting of Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kans., Oct. 26, 1905.	113	III	969
101	... do	Proceedings, stockholders' meeting, Atchison, Topeka and Santa Fe Ry. Co., Topeka, Kans., Oct. 22, 1908.	113	III	970
102	... do	Proceedings, board of directors' meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906.	113	III	970
103	... do	Proceedings, board of directors' meeting, Atchison, Topeka and Santa Fe Ry. Co., Dec. 5, 1906.	113	III	972
104	... do	Agreement between Atchison, Topeka and Santa Fe Ry. Co. and Southern Pacific Co. with respect to sale of Phoenix and Eastern Ry. and joint trackage agreements, Dec. 7, 1906.	113	III	974
105	... do	Agreement between Southern Pacific R. R. Co., Phoenix and Eastern Ry. Co., and Southern Pacific Co. and Atchison, Topeka and Santa Fe Ry. Co.—Trackage right between Phoenix and Deming.	113	III	980
106	... do	Deming agreement between Atchison, Topeka and Santa Fe Ry. Co., Arizona and California Ry. Co., Santa Fe, Prescott and Phoenix Ry. Co. and Southern Pacific Co., granting to Southern Pacific Co. trackage rights between Phoenix and Mojave.	113	III	997
107	Murphy	Map, Union Pacific and Southern Pacific Systems, 1908.	113	III	1015
108	... do	Map, Atchison, Topeka and Santa Fe Ry. System, 1908.	120	III	1048
109	Schiff	Plan and agreement for the reorganization of Union Pacific Ry. Co., including its Kansas-Pacific lines, Oct. 15, 1895.	125	III	1077

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
110	Morawetz ...	List of members of executive committee of board of directors of Atchison, Topeka and Santa Fe Ry. Co., from and including election of Jan. 6, 1904, to and including election of Nov. 4, 1908.	140	III	1166
111A	Douglas	Letter from F. M. Murphy to Mr. Hutchinson, Phelps, Dodge & Co. Aug. 10, 1901; and memo. re contract between Arizona and S. E. Ry. and S. F. P. & P. Ry.	141	III	1171
111B	... do	Letter from El Paso & Southwestern R. R. Co. to F. M. Murphy, Aug. 12, 1901.	141	III	1174
111C	... do	Letter to F. M. Murphy from James Douglas, Oct. 23, 1901.	141	III	1177
111D	... do	Telegram from F. M. Murphy to James Douglas, Nov. 3, 1901.	142	III	1177
111E	... do	Letter from F. M. Murphy to S. P. Hutchinson, Nov. 9, 1901.	142	III	1178
111F	.. do	Letter from S. P. Hutchinson to Phelps, Dodge & Co., Nov. 11, 1901.	142	III	1179
111G	... do	Letter from S. P. Hutchinson to James Douglas, Nov. 14, 1901.	142	III	1180
111H	... do	Letter from Santa Fe, Prescott and Phoenix Ry. Co. to El Paso and Southwestern R. R. Co., Mar. 10, 1902.	142	III	1181
111I	... do	Letter from James Douglas to Phelps, Dodge & Co., May 10, 1902.	142	III	1182
111J	... do	Traffic agreement between El Paso and Southwestern R. R. Co. and Santa Fe, Prescott and Phoenix Ry. Co.	142	III	1184
111K	... do	Letter from F. M. Murphy to James Douglas, June 24, 1902.	142	III	1189
111L	... do	Letter from El Paso and Southwestern R. R. Co. to Frank Murphy, July 14, 1902.	142	III	1190
111M	... do	Letter from F. M. Murphy to James Douglas, July 19, 1902.	142	III	1192
111N	... do	Letter from F. M. Murphy to James Douglas, July 25, 1902.	142	III	1194
111O	... do	Letter from F. M. Murphy to James Douglas, July 28, 1902.	142	III	1194
112	Watson	Form of postal card notice (showing joint agency at Pittsburg).	171	III	1353
113	... do	J. E. Corfield business card (showing joint agency at Pittsburg).	171	III	1354
114	... do	Letter from G. C. Herring to Knowles, Taylor & Knowles.	171	III	1354
115	Nichols	W. H. Connor business card (showing joint agency at Cincinnati).	187	IV	1477
116	...do	Lyon Liston business card and map for same purpose.	187	IV	1477
117					
118	.....	Withdrawn	.....	.....	....

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
119	Stebbins (1) revised ...	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.*	257	IV	1872
120	... do	..... do*	257	IV	1872
120A	Stebbins (1).	Statement of certain traffic carried by Southern Pacific. *	258	IV	1872
120B	... do	Statement of certain traffic carried by Southern Pacific Co. lines via El Paso.*	258	IV	1872
120C	... do	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.*	258	IV	1872
120D	... do	Statement of certain traffic carried by Union Pacific System lines and Southern Pacific Co. lines.*	258	IV	1872
121	Stebbins (1), revised ...	..... do*	258	IV	1872
122	... do	..... do*	258	IV	1872
123	Stebbins (1).	..... do*	258	IV	1872
124	... do	..... do*	258	IV	1872
125	... do	..... do*	258	IV	1872
126	... do	..... do*	258	IV	1872
127	.....	Southern Pacific Co.—List of securities, issued since Dec. 31, 1906, and including Dec. 17, 1908.	273	V	1970
128	.....	Union Pacific R. R. Co.—List of securities, issued from Dec. 31, 1906, to Dec. 17, 1908.	274	V	1970
129	.....	Union Pacific R. R. Co.—Directors elected Oct. 8, 1907; Oct. 13, 1908, etc.	274	V	1971
130	.....	Oregon Short Line R. R. Co.—Directors elected Oct. 9, 1907; Oct. 14, 1908, etc.	274	V	1972
131	.....	Southern Pacific Co.—Directors elected Apr. 3, 1907; Apr. 8, 1908, etc.	274	V	1973
132	.....	Pacific Mail S. S. Co.—Directors elected May 29, 1907; May 27, 1908, etc.	274	V	1974
133	.....	Oregon R. R. and Navigation Co.—Directors elected Sept. 26, 1907; Sept. 10, 1908, etc.	274	V	1975
134	.....	Occidental and Oriental S. S. Co.—Directors elected July 10, 1907, and July 8, 1908; San Francisco and Portland S. S. Co.—Directors elected June 19, 1907, and June 3, 1908, and supplements thereto.	274	V	1976
135	.....	San Pedro, Los Angeles and Salt Lake R. R. Co.—Directors elected Nov. 16, 1907, and Nov. 16, 1908, etc., and supplements thereto.	274	V	1977
136 to 149	.....	Oregon Short Line—Union Pacific proxies.	274	V	1978 to 1989

*Exhibit set out in full at close of abstract.

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
150	Stubbs (2)..	Proceedings at hearing before board of arbitration on question of Canadian Pacific differentials, at Auditorium Hotel, Chicago, Oct. 12, 1898.	297	V	2043
151	McCarthy ...	Union Pacific rate card—Class rates from eastern points to Utah common points, in effect Oct. 1, 1900.	321	VI	2359
152	... do	Union Pacific rate card—Class rates to Utah common points, in effect July 1, 1908.	322	VI	2364
153	Love (1)....	Comparative statement of rates, etc.	337	VI	2456
154	... do	Petition, T. E. Gibbon to mayor and city council of Salt Lake, Sept. 25, 1900; and petition, W. A. Clark to mayor and city council of Salt Lake City, Oct. 2, 1900; report from committee on streets, public grounds, and municipal laws to president and members of common council, Salt Lake City, Oct. 23, 1900.	337	VI	2460
155	Kerr	Article, Salt Lake Tribune, Sept. 7, 1900.	346	VI	2510
156	... do	Article, Salt Lake Tribune, Sept. 19, 1900.	346	VI	2513
157	... do	Article, Salt Lake Tribune, Sept. 27, 1900.	347	VI	2515
158	... do	Article, and speech by Senator Clark, Salt Lake Tribune, Oct. 3, 1900.	347	VI	2517
159	Love (2)....	Statement showing rates for 100 miles out of Salt Lake.	361	VI	2602
160	... do	Statement showing rates out of Salt Lake on a number of commodities.	361	VI	2603
161	Crichton	Letter from C. H. Markham to Columbia River and Puget Sound Navigation Co.	399	VI	2808
162	Grimes	Report by W. H. Holabird upon traffic possibilities for a standard-gauge railroad between Drain and Marshfield, Ore., made at the direction of E. H. Harriman.	407	VI	2875
163	... do	Telegram from J. T. McCormac and W. H. Evans to J. Kruttschnitt, Mar. 9, 1909.	407	VI	2879
164	... do	Telegram from E. H. Harriman to J. T. McCormac and W. H. Evans, Mar. 9, 1909.	407	VI	2880
165	... do	Letter from J. T. McCormac to E. H. Harriman, Mar. 11, 1909.	407	VI	2880
166	... do	Letter from E. H. Harriman to J. T. McCormac and W. H. Evans, Mar. 18, 1909.	407	VI	2881
167	... do	Letter from J. T. McCormac to E. H. Harriman, Apr. 7, 1909.	407	VI	2882

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
168	Grimes	Letter from Alex. Millar to J. T. McCormac, Apr. 21, 1909.	407	VI	2883
169	Connor	Contract between Panama R. R. Co. and the Pacific Mail S. S. Co., June 11, 1902.	413	VII	2914
170	Whittemore..	Bill of complaint in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry. Co., et al.	462	VII	3149
171	... do	Answer and cross bill of San Pedro, Los Angeles and Salt Lake R. R. Co. to amended and supplemental bill of complaint in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry. Co., et al.	462	VII	3165
172	... do	Amended and supplemental bill of complaint, etc., in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry. Co., et al.	462	VII	3181
173	... do	Amended answer to original bill in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry Co., et al.	462	VII	3213
174	... do	Affidavit of J. K. W. Bracken.....	462	VII	3225
175A	... do	Order of Judge Hawley, Apr. 27, 1901, in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry. Co., et al.	463	VII	3230
175B	... do	Order of court, July 22, 1901, in case of Utah, Nevada and California R. R. v. Utah and California Ry. Co., et al.	463	VII	3232
175C	... do	Order of Judge Hawley, Aug. 9, 1901, in case of Utah, Nevada and California R. R. Co. v. Utah and California Ry. Co., et al.	463	VII	3233
176	... do	Amended and supplemental bill of complaint, filed by leave of court, etc., in case of Utah, Nevada and California R. R. Co. v. John Simpson et al.	463	VII	3238
177	Rossbottom .	Statement of tonnage from New York to San Francisco and vice versa, from 1898 to 1908, inclusive.	469	VII	3288
178	... do	Letter from R. P. Schwerin to E. A. Drake, Feb. 18, 1909.	469	VII	3290
179	... do	Contract between Panama R. R. Co. and the Pacific Mail S. S. Co., Dec. 16, 1895.	470	VII	3293
180	... do	Suppemental contract between the Panama R. R. Co. and the Pacific Mail S. S. Co., June 11, 1902.	470	VII	3311
181	... do	Contract between Pacific Mail S. S. Co. and Union Pacific R. R. Co., Oct. 1, 1872.	470	VII	3316
182	...do	Agreement between Transcontinental Association and Pacific Mail S. S. Co., Oct. 1, 1889.	470	VII	3321

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
182½	Rossbottom .	Letter—Notice—Panama Railroad Company to Pacific Mail Steamship Co., Jan. 12, 1905.	472	VII	3342
183A	White (2), (I. C. C.).	Statement showing class rates from Portland to San Francisco from Apr. 3, 1888, to date.	474	VII	3353
183B	... do	Supplement to statement No. 1688, showing "emergency" rates between Portland and San Francisco, effective Dec. 1, 1895.	474	VII	3353
184	... do	Southern Pacific Co. tariff, showing rates between San Francisco and Portland, Salem, and points between, effective Dec. 1, 1895.	475	VII	3354
185	... do	Southern Pacific Co. tariff, naming rate from San Francisco to Portland, Albany, and points between, effective Dec. 15, 1895, superseding interstate special rate No. 1258.	475	VII	3355
186	... do	Southern Pacific Co. tariff, showing rates between San Francisco, Sacramento, Stockton, Marysville, Oakland, Sixteenth Street, and San Jose, and Utah common points, effective Dec. 12, 1887.	475	VII	3356
187	... do	Oregon Ry. and Navigation Co.—Union Pacific Ry. Co., special tariff on canned fruit and vegetables to Salt Lake City, Montana common points and Union Pacific eastern terminals, effective June 29, 1888.	475	VII	3358
188	... do	Transcontinental Association westbound tariff, effective Jan. 15, 1891, etc.	475	VII	3358
189	... do	Statement showing rates on wool in grease, carloads, minimum weight 20,000 pounds, from points on Oregon Short Line R. R. to New York, all-rail, in comparison with rates from points on Southern Pacific System via El Paso and Sunset Gulf routes, except as noted.	475	VII	3361
190	... do	Statement showing rates on classes and two commodities between Portland, Ore., and Ogden and Salt Lake City, Utah, via Oregon R. R. & Navigation Co. and Oregon Short Line R. R., in comparison with rates via Southern Pacific Co.	475	VII	3363
191	... do	Statement showing rates on classes between Portland, Ore., and Colorado common points, via Oregon R. R. and Navigation Co. and Oregon Short Line R. R. in comparison with rates via Southern Pacific Co.	475	VII	3364

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
192	White (2), (I. C. C.).	Statement showing rates on classes and two commodities between Portland, Ore., and Ogden and Salt Lake City, Utah, via Oregon R. R. and Navigation Co. and Oregon Short Line R. R., in comparison with rates via Southern Pacific Co.	475	VII	3366
193	... do	Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail via Norfolk, Va., from May, 1899, to date.	476	VII	3369
194	... do	Statement showing class rates from New York, N. Y., to Colorado common points via sea and rail via Savannah, Ga., from June 1, 1904, to date.	476	VII	3370
195	... do	Statement showing rates on ore and concentrates, carloads, from stations on Phoenix and Eastern R. R. to Humboldt, Ariz., in effect Feb. 3, 1906.	476	VII	3371
196	... do	Statement showing rates on ore and concentrates and copper matte, carloads, from stations on Phoenix and Eastern R. R. to Humboldt, Ariz., in effect June 1, 1907, and Sept. 10, 1907, as noted.	476	VII	3372
197	... do	Southern Pacific Company's through rate tariff No. 740, showing rates on wool to points named.	476	VII	3373
198	... do	Same as Complainant's Exhibit 197, but filed by Rio Grande Western Ry.	476	VII	3373
199	... do	Tariffs on wool in bales filed by Rio Grande Western.	476	VII	3374
200	.....	Statement showing ownership of stock in Union Pacific, Southern Pacific, Atchison, Topeka and Santa Fe Railway companies, by the individual defendants and the firm of Kuhn, Loeb & Co., at the various dates stated.	479	VII	3391
201	.....	Memoranda showing method used to divide (distribute) transcontinental freight rates, etc.	479	VII	3397
202	.....	No Exhibit 202.			
203	.....	Articles of incorporation of San Pedro, Los Angeles and Salt Lake R. R. Co.	481	VII	3405
204	.....	Agreement between San Pedro, Los Angeles and Salt Lake R. R. Co. and the Pacific Fruit Express, Mar. 1, 1908.	481	VII	3417
205	.....	Articles of association of Union Pacific R. R. Co., etc.	481	VII	3423

Complainants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
206	.....	Articles of incorporation of Oregon Short Line R. R. Co.	481	VII	3433
207	.....	Articles of incorporation of Oregon R. R. and Navigation Co.	481	VII	3439
208	.....	Act of general assembly of State of Kentucky, incorporating Southern Pacific Co., etc.	481	VII	3462
209	.....	I. C. C. Supplement No. 2 to statement No. 1688, showing special rates on salt and sugar between San Francisco, Cal., and Portland, Ore., etc.	482	VII	3466
210	Munroe (2)..	Understanding between San Pedro and Southern Pacific companies, of Aug. 2, 1905, and change by conference between them Jan. 27, 1906.	570	IX	4070
211	**Stebbins (2).**	**Letter from Erastus Young to E. R. Murphy, Sept. 1, 1909.**	761	X	4605
212	**White (3), I. C. C.....**	**Statement showing differential rates in effect Dec. 1, 1908, and Jan. 1, 1909, on traffic from New York, N. Y., via all-rail and from Morgan Line pier via Morgan Line to San Francisco.**	934	XI	4962
213	**Peter, I. C. C.**	**Statement compiled from annual reports of Oregon R. R. and Navigation Co. to Interstate Commerce Commission for years ending June 30, 1905, to 1896, showing miscellaneous income from ocean and river steamers.**	940	XI	4969
214	....do.....	Statement showing tons carried one mile, freight revenue, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems.	941	XI	4972
215	....do.....	Statement showing operating revenues, operating expenses, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems.	941	XI	4993
216	....do.....	Statement showing maintenance of way and structures, maintenance of equipment, etc., Union Pacific, Southern Pacific, Northern Pacific, Atchison, Topeka and Santa Fe, Great Northern, Denver and Rio Grande, and Canadian Pacific systems (separate volume of exhibits).	941	XI	5042
217	Tweed	Last will and testament of Collis P. Huntington.	946	XI	5059

Complainant's Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Printed record. Page.
218	.....	**Statement relative to dividends on Oregon Short Line R. R. Co. stock Jan 1, 1901, to Mar. 31, 1910.**	952	XI	5082
219	.....	**Statement of dividends of stock of Oregon R. R. and Navigation Co. owned by Union Pacific R. R. Co. and Oregon Short Line R. R. Co. from July, 1901, to date.**	953	XI	5083
....	.....	Stipulation. Death of certain officers. Their successors.	955	XI	5084

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
1	Stebbins (1).	Letter from R. S. Lovett to Kellogg & Severance, June 27, 1908.	258 483	IV	1873
2	.....do.....	Letter from C. A. Severance to Robert S. Lovett, July 23, 1908.	258 483	IV	1874
3	.....do.....	Letter from Erastus Young to R. S. Lovett, Aug. 12, 1908.	258 483	IV	1875
4	.....do.....	Letter from Davis, Kellog & Severance to R. S. Lovett, Aug. 24, 1908.	258 483	IV	1878
5	.....do.....	Letter from C. A. Severance to R. S. Lovett, Sept. 11, 1908.	258 483	IV	1880
6	.....do.....	Letter from Erastus Young to R. S. Lovett, Dec. 18, 1908.	258 483	IV	1881
7	.....do.....	Letter from C. A. Severance to R. S. Lovett, Feb. 11, 1909.	258 483	IV	1883
8	.....	Letter from Erastus Young to R. S. Lovett, Mar. 6, 1909.	258 483	IV	1885
9	.....	No exhibit of this number.			
10	.....	Bill of complaint filed in Circuit Court of United States for Eighth Judicial District of Nebraska, in the case of Oliver Ames et al. v. Union Pacific Ry. Co. et al., Oct., 1893.	483	VIII	3469
11	.....	Answer of defendants Union Pacific Ry. Co. in same case as Defendants' Exhibit 10, Oct. 1893.	483	VIII	3511
12	.....	Order appointing receivers in same case as Defendants' Exhibit 10, Oct., 1893.	483	VIII	3513
13	.....	Decree of foreclosure in same case, July 29, 1897.	483	VIII	3517
14	.....	Order of court confirming sale, Nov. 8, 1897.	483	VIII	3547
15	.....	Assignment by Louis Fitzgerald and Alvin W. Krech of their bid to Union Pacific R. R. Co.	483	VIII	3548
16A	.....	Deed under decree foreclosing first mortgage of Union Pacific R. R. Co., Wm. D. Cornish, special master, and others to the Union Pacific R. R. Co., Jan 22, 1898.	483	VIII	3551
16B	.....	Third report of Wm. D. Cornish, special master, under decree of foreclosure in case of United States v. Union Pacific Ry. Co. et al., Jan. 27, 1898 (with subexhibits).	483	VIII	3568
16C	.....	Order confirming third report of special master in case of United States v. Union Pacific Ry. Co. et al., Jan. 31, 1898.	484	VIII	3575

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
17	.....	Final decree in case of United States v. Union Pacific Ry. Co. et al., July 29, 1897.	484	VIII	3576
18	.....	Order confirming special master's first report of sale in case of United States v. Union Pacific Ry. Co. et al., Nov. 6, 1897.	484	VIII	3603
19	.....	Assignment of bid by Louis Fitzgerald and Alvin W. Krech in favor of United States, Jan. 17, 1898.	484	VIII	3604
20	.....	Deed, under decree foreclosure government subsidy lien on Union Pacific Railroad, Wm. D. Cornish, special master, and others to Union Pacific R. R. Co., Jan. 22, 1898.	484	VIII	3608
21	.....	Final decree in case of United States v. Union Pacific Ry. Co. et al., July 30, 1897.	484	VIII	3624
22	.....	Decree confirming sale, in case of United States v. Union Pacific Ry. Co. et al., Feb. 17, 1898.	484	VIII	3637
23	.....	Second report of Wm. D. Cornish, special master, under decree of foreclosure, in case of United States v. Union Pacific Ry. Co. et al., May 12, 1898 (with subexhibits).	484	VIII	3638
24	.....	Order confirming second report of Wm. D. Cornish, special master, under decree of foreclosure in case of United States v. Union Pacific Ry. Co. et al., May 13, 1898.	484	VIII	3642
25	.....	Assignment by Winslow S. Pierce and Alvin W. Krech to Union Pacific R. R. Co. of their bid at sale.	484	VIII	3644
26	.....	Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Apr. 19, 1898.	485	VIII	3647
27	.....	Decree of foreclosure rendered July 30, 1897, by Circuit Court of the United States for the District of Kansas.	485	VIII	3657
28	.....	Order confirming sale, Mar. 5, 1898.	485	VIII	3692
29	.....	Assignment of bid by Alvin W. Krech and Lawrence Greer to Union Pacific R. R. Co., Mar., 1898.	485	VIII	3693
30	.....	Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Mar. 22, 1898.	485	VIII	3697
31	.....	Foreclosure decree, Denver Pacific first mortgage, July 31, 1897.	485	VIII	3721
32	.....	Order confirming sale under foreclosure decree, Denver Pacific first mortgage, Mar. 14, 1898.	485	VIII	3745

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
33	.....	Assignment of bid by Krech & Greer under Denver Pacific mortgage foreclosure to Union Pacific R. R. Co., Mar. 21, 1898.	485	VIII	3746
34	.....	Deed from Wm. D. Cornish, special master, et al. to Union Pacific R. R. Co., Mar. 22, 1898, conveying property sold under Denver-Pacific Ry. and Telegraph Co. mortgage.	485	VIII	3749
35	.....	Articles of consolidation and agreement between Oregon Short Line Ry. Co., Utah and Northern Ry. Co., Utah Central Ry. Co., Salt Lake and Western Ry. Co., Utah and Nevada Ry. Co., Ogden and Syracuse Ry. Co., Idaho Central Ry. Co., and Nevada Pacific Ry. Co., Apr. 20, 1901.	485	VIII	3777
36	.....	Agreement between United States, Central Pacific R. R. Co., and Speyer & Co., Feb. 1, 1899.	486	VIII	3793
37	.....	Notice to holders of bonds and shares of Central Pacific R. R. Co., Feb. 20, 1899, plan of readjustment Feb. 8, 1899; readjustment agreement Feb. 8, 1899.	486	VIII	3805
38	.....	Articles of association of Central Pacific Ry. Co., July 26, 1899.	486	VIII	3829
39	.....	Agreement between Central Pacific R. R. Co. and Cental Pacific Ry. Co., July 29, 1899.	486	VIII	3834
40	.....	Lease, Central Pacific R. R. Co. to Southern Pacific Co., Feb. 17, 1885.	486	VIII	3839
41	.....	Southern Pacific Co. to Central Trust Co. of New York, trustee—Indenture subordinating lease to lien of Central Pacific Ry. Company's first refunding mortgage, Aug. 1, 1899.	486	VIII	3852
42	.....	Southern Pacific Co. to United States Trust Co., trustee—Indenture subordinating lease to lien of Central Pacific Ry. Company's 3½ per cent mortgage, Aug. 1, 1899.	486	VIII	3855
43	.....	Collateral trust mortgage of Southern Pacific Co. to Union Trust Co. of New York, trustee, August. 1, 1899.	486	VIII	3858
44	.....	Supplemental mortgage from Southern Pacific Co. to Union Trust Co. of New York, trustee, Dec. 29, 1899.	486	VIII	3877
45	**Stubbs (3)...**	**Westbound Asiatic traffic—Volume and Union Pacific and Southern Pacific revenue via Portland and Sunset Gulf route.**	517	IX	3949

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
45A	"Supplemental" Stebbins (2)....	Statement of tons carried and freight revenue of Union Pacific System on westbound freight traffic between the Orient and various eastern territories via Portland, Ore., for the fiscal year ending June 30, 1901.	736	X	4556
45B	.....do.....	Southern Pacific Co., Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines on business forwarded to China and Japan, for fiscal year ending June 30, 1900.	737	X	4560
45C	.....do.....	Asiatic traffic: Volume and Union Pacific and Southern Pacific Revenue for year ending June 30, 1900.	737	X	4561
45D	....do.....	Statement of tons carried and freight revenue of Union Pacific System, on eastbound freight traffic between the Orient and various eastern territories via Portland, Ore., for the fiscal year ending June 30, 1901.	738	X	4562
45E	.....do.....	Statement of freight traffic from points in Missouri River and common points territory and points east thereof, via Chicago, Milwaukee and St. Paul Ry. and Chicago and Northwestern Ry. to the Orient, via Union Pacific R. R., Ogden, Utah, and Southern Pacific Co.-Pacific System, for the fiscal year ending June 30, 1901.	738	X	4564
45F	.....do.....	Statement of freight traffic from the Orient via Southern Pacific Co.-Pacific System, Ogden, Utah, and Union Pacific R. R. to points in Missouri River and common points territory and points east thereof, via the Chicago, Milwaukee and St. Paul Ry. and Chicago and Northwestern Ry. for fiscal year ending June 30, 1901.	740	X	4566
45G	.....do.....	Statement of tons carried and freight revenue of Union Pacific System on westbound and eastbound freight traffic between the Orient and various eastern territories via Portland, Ore., for fiscal year ending June 30, 1900.	758	X	4602
46	Stubbs (3)...	Traffic between San Francisco and Portland, volume and Union Pacific and Southern Pacific earnings, for year ending June 30, 1901.	520	IX	3953

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
46A	"Supplemental" Stebbins (2)....	Statement of tonnage and Union Pacific System (Oregon R. R. & Navigation Co.)—Revenue on freight traffic handled by the Oregon R. R. & Navigation Co.'s steamship line between San Francisco and Portland locally (not including traffic to or from points beyond Portland), for fiscal year ending June 30, 1901.	741	X	4567
47	Stubbs (3)...	**Willamette Valley traffic, year ending June 30, 1901.**	522	IX	3956
47A	**"Supplemental" Stebbins (2)....**	**Willamette Valley traffic for year ending June 30, 1901.**	741	X	4568
47B	.....do.....	**Statement showing tonnage and Union Pacific System freight revenue on certain freight traffic handled by the Oregon R. R. and Navigation Co.'s Willamette River boats, for fiscal year ending June 30, 1901.**	742	X	4569
48	Stubbs (3)...	**Lumber and other traffic, from Portland to Ogden and common points and beyond, via Southern Pacific Co. and Denver and Rio Grande R. R. and via Union Pacific System, for July, September, and November, 1900, and January, March, and April, 1901.**	524	IX	3958
48A	"Supplemental" Stebbins (2)....	Tonnage and revenue on freight traffic (principally lumber) from Portland, Ore., to Utah common points, Colorado common points, and points east thereof, competitive between the Union Pacific System Lines and Southern Pacific Co.-Pacific System, for July, Steptember and November, 1900, and January, March, and April, 1901.	743	X	4572
48B	.....do.....	**Freight traffic originating at Portland, Ore., routed east, via Rio Grande lines.**	743	X	4573
49	Stubbs (3)...	**Traffic to and from Portland and Atlantic seaboard, Pittsburg, etc., via Sunset route and via Union Pacific Granger route, for fiscal year ending June 30, 1900.**	526	IX	3960
49A	"Supplemental" Stebbins (2)....	Statement of freight traffic between Portland, Ore., and points in Missouri River and common points territory and points east thereof, via Southern Pacific Co.-Pacific system, El Paso, Tex., and New Orleans, La., for fiscal year ending June 30, 1900.	744	X	4575

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
49B	"Supplemental" Stebbins (2)....	Statement of tons carried and freight revenue of Union Pacific System on freight traffic between Portland, Ore., proper and various eastern territories via Granger, Wyo., for fiscal year ending June 30, 1900.	744	X	4576
50	Stubbs (3)...	**Traffic to and from Portland and Atlantic seaboard, Pittsburg and Ohio River territories, year ending June 30, 1900.**	528	IX	3962
50A	"Supplemental" Stebbins (2)....	**Traffic to and from Portland and Atlantic seaboard, Pittsburg and Ohio River territories, including all traffic between Portland and points on and east of Missouri River, year ending June 30, 1900.**	745	X	4577
50B	... do	**Statement of freight traffic between Portland, Oreg., and Missouri River and common points territory and points east thereof, via Southern Pacific Co. lines via Ogden and Rio Grande Western Ry., for year ending June 30, 1900.**	745	X	4578
51	Stubbs (3)...	**Hops and wool from Portland to Missouri River and east.**	530	IX	3964
51A	"Supplemental" Stebbins (2)....	Tonnage and freight revenue on hops and wool traffic from Portland, Ore., to Missouri River and east thereof, via the Union Pacific System lines and Southern Pacific Co. lines, for fiscal year ending June 30, 1900.	746	X	4580
52	Stubbs (3)...	**Traffic between San Francisco and Montana and Idaho points (including eastern Oregon, Washington, and British Columbia), served by Northern Pacific and competed for—for the service between San Francisco and Portland—by the Southern Pacific and the Oregon R. R. and Navigation Co., for the year 1900.**	531	IX	3966
52A	"Supplemental" Stebbins (2)....	Tonnage and freight revenue of traffic from and to San Francisco Bay points via Portland, Oreg., (not via Huntington or Ogden), to and from points on Northern Pacific Ry. east of Pasco, Wash.	747	X	4581
53	Stubbs (3)...	**Traffic between Atlantic seaboard territory and Colorado common points via Southern Pacific and Gulf ports, via Union Pacific, all-rail, and via Union Pacific and South Atlantic ports, for year ending June 30, 1900.**	534	IX	3969

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Printed record. Page.
53A	"Supplemental" Stebbins (2)....	Southern Pacific Co., Atlantic steamship lines.—Statement of tonnage and revenue accruing to system lines on business from and to Utah points, for fiscal year ending June 30, 1900.	747	X	4583
53B	.....do.....	Southern Pacific Co., Atlantic steamship lines.—Statement of tonnage and revenue accruing to system lines on business from and to Colorado points, for fiscal year ending June 30, 1900.	747	X	4584
54	Stubbs (3)...	X, Y, Z exhibits, Southern Pacific Co., Union Pacific Co., Union Pacific and Southern Pacific—Recapitulation of tonnage and revenue.	536	IX	3970
54A	"Supplemental" Steb-(2)	Southern Pacific Co., Union Pacific Co., Union Pacific, and Southern Pacific—Total operating revenue, fiscal year ending June 30, 1900, and June 30, 1901, etc.	756	X	4599
55	Spence	Map—Available routes to Colorado and Utah during the year 1901, facing.	550	IX	4003
55A	"Supplemental" Stebbins (2)....	Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland) via Southern Pacific Co.-Pacific System, El Paso, Tex., and New Orleans, La., from eastern territories, as specified, for fiscal year ending June 30, 1900.	749	X	4586
55B	.....do.....	Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.-Pacific System, El Paso, Tex., and New Orleans, La., to eastern territories, as specified, for fiscal year ending June 30, 1900.	749	X	4587
55C	.....do.....	Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.-Pacific System, El Paso, Tex., and New Orleans, La., from eastern territories, as specified, for fiscal year ending June 30, 1900.	750	X	4587
55D	.....do.....	Statement of total freight traffic from points in Willamette Valley, Oregon (excluding Portland), via Southern Pacific Co.-Pacific System, El Paso, Tex., and New Orleans, La., to eastern territories, as specified, for fiscal year ending June 30, 1900.	751	X	4589

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record.	
				Vol.	Page.
56	Spence	Principal available routes between New York and Boston and San Francisco, during the year 1901, (Diagram.)	550	IX	4003
57	.....do.....	**Rates in effect Jan. 25, 1910, in Transcontinental Freight Bureau Wesbound Tariff No. 1-J (R. H. Countiss, agent, I. C. C. No. 904), to California terminals.**	552	IX	4007
58	.....do.....	**Southern Pacific Co.—Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines by territories, as shown, for fiscal year ending June 30, 1898.**	559	IX	4027
59	.....do.....	**Southern Pacific Co.-Atlantic S. S. Lines—Statement of tonnage and revenue accruing to system lines by territories, as shown, for fiscal year ending June 30, 1900.**	560	IX	4028
60	Munroe (2)..	Westbound Tariff No. 1-J—List of participating carriers.	568	IX	4048
61	Kruttschnitt (2)	Comparative wages paid employees in years 1897 and 1908.	575	IX	4090
62	.....do.....	Chart—Comparative wages paid certain classes of employees in 1908 and 1897, Union Pacific System.	575	IX	4090
63	.....do.....	Chart—Comparative wages paid certain classes of employees in 1908 and 1897, Southern Pacific Co.	575	IX	4090
64	.....do.....	Chart—Comparative prices paid for material used in operations in 1908 and 1897, Union Pacific System.	576	IX	4091
65	.....do.....	Bulletin No. 81, March, 1909, of U. S. Department of Commerce and Labor, showing prices of certain materials used in railroad operations.	576	IX	4091
66	.....do.....	Chart—Relative power of wages and commodities to purchase ton mileage and power of ton mileage to purchase commodities and wages, all railroads in United States.	577	IX	4093
67	.....do.....	Chart—Relative prices of labor and material, and actual earnings per passenger and ton mile of Union Pacific System and Southern Pacific Co. compared with what earnings should be because of depreciation in exchange value of transportation since 1901.	577	IX	4093

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
68	Kruttschnitt (2)	Statement—Value to the public of absorption by Union Pacific and Southern Pacific systems of the depreciated purchasing power of money received as freight and passenger fares.	578	IX	4096
69	.....do.....	Southern Pacific Co.—Earnings per ton mile.	579	IX	4097
70	.....do.....	Chart, Union Pacific System-Southern Pacific Company—Improvement in physical conditions, etc.	580	IX	4099
71	.....do.....	Statement—Improvement in physical condition.	580	IX	4099
72	.....do.....	Union Pacific System—Expenditures for betterments and additions, equipment, and new construction.	581	IX	4102
73	.....do.....	Southern Pacific Co.—Expenditures for betterments and additions, equipment, and new construction.	581	IX	4103
74 to 98	...do.....	Photographs (as described by witness.)	584 to 585	IX	4107
99	.....do.....	Statement—Betterments and additions to corporations making up the respective through routes, Omaha to San Francisco and New Orleans to San Francisco, for eight years ending June 30, 1909.	586	IX	4110
100	.....do.....	Chart—Improvement in physical condition since June 30, 1901, main line Council Bluffs-Oakland Pier, compared with main line Algiers-San Francisco.	588	IX	4114
101	.....do.....	Union Pacific System-Southern Pacific Co.—Improvements made annually since 1901.	589	IX	4118
102	.....do.....	Chart, Union Pacific System-Southern Pacific Co.—Average speed of all freight trains, in miles per hour, and relative number of meeting points of all trains.	590	IX	4120
103	....do.....	Chart, Union Pacific R. R.—Relative traffic over main line between Omaha and Ogden, from 1896 to 1909, inclusive.	592	IX	4123
104	.....do.....	Statement—Union Pacific R. R. main line, Omaha to Ogden, gross ton miles per mile of road, daily train density, meeting points, etc.	593	IX	4125
105	....do.....	Effect of increases in speed on freight train density for given traffic.	594	IX	4127

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106	Kruttschnitt (2)	Chart—Average number of train accidents per 1,000,000 locomotive miles during fiscal year ending June 30, 1904, compared with 1909.	599	IX	4133
107	.....do.....	Chart—Gross earnings per mile of railroad operated.	601	IX	4136
108	...do.....	Algiers terminal blueprint (not printed).	602	IX	4139
109		Galveston terminal blueprint (not printed).			
110	.....do.....	Book of photographs, as described witness (not printed).	603	IX	4139
111	.....do.....	Profile chart of rail routes from Portland via Huntington and via Roseville to Ogden and Granger (not printed).	603	IX	4141
112 to 120	Mohler.....	Photographs, as described by witness (not printed).	623	IX	4192
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153	.....do.....	Comparative chart showing average speed in miles per hour of merchandise trains; average miles per car per day, all classes of freight service, January, 1907, to February, 1909; average speed in miles per hour of all through passenger trains on roads named, 1909; average miles per car per day.	648	IX	4268
154	O'Brien	Oregon R. R. and Navigation Co.—Statement of expenditures for additions, betterments, and improvements from July 1, 1900, to June 30, 1909.	675	IX	4334
155	.....do.....	Oregon R. R. and Navigation Co.—Renewal of rails, main line.	675	IX	4335
156	.....do.....	Oregon R. R. and Navigation Co.—Renewals of rails, branches.	675	IX	4336
157	.....do.....	Oregon R. R. and Navigation Co.—Sidetracks, ballasting, tieplates, turntables.	675	IX	4337

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
158	O'Brien	Oregon R. R. and Navigation Co.—Automatic block signals, fuel oil plants, track scales, fencing.	675	IX	4338
159	.....do.....	Oregon R. R. and Navigation Co.—Statement of improvements and betterments from July 1, 1900, to June 30, 1909.	676	IX	4340
160	.....do.....	Oregon R. R. and Navigation Co.—New steel bridges erected, etc.	676	IX	4341
161	.....do.....	Oregon R. R. and Navigation Co.—Locomotive equipment, etc.	676	IX	4342
162	.....do.....	Oregon R. R. and Navigation Co.—Freight equipment, etc.	676	IX	4343
163	.....do.....	Oregon R. R. and Navigation Co.—Statement of expenditures for additions, betterments, and improvements from July 1, 1909, to Nov. 30, 1909.	676	IX	4344
164	.....do.....	Oregon R. R. and Navigation Co.—Statement of important new work started and now under way, dating from Nov. 30, 1909.	676	IX	4344
165	.....do.....	Oregon R. R. and Navigation Co.—Statement of new lines constructed and now under way, July 1, 1900, to Jan. 1, 1910.	676	IX	4345
166	.....do.....	Oregon R. R. and Navigation Co.—Statistics of freight and passenger traffic moved year 1900 compared with year 1909.	676	IX	4346
167	.....do.....	Oregon R. R. and Navigation Co.—Average consist of through passenger trains, Jan. 1, 1900, to Jan. 1, 1910.	676	IX	4346
168 to 176	...do.....	Photographs, as described by witness (not printed).	677	IX	4347 to 4348
177	.....do.....	Southern Pacific Co., lines in Oregon—Statement of expenditures for additions, betterments, and improvements, from July 1, 1904, to June 30, 1909.	677	IX	4348
178	.....do.....	Southern Pacific Co., lines in Oregon—Statement showing mileage of the different weights of steel rails in the track on July 1, 1904, as compared with June 30, 1909.	677	IX	4349
179	.....do.....	Southern Pacific Co., lines in Oregon—Ballasting, tie plates.	677	IX	4350
180	.....do.....	Southern Pacific Co., lines in Oregon—New steel bridges erected and wooden structures replaced by steel structures or embankments, July 1, 1904-June 30, 1909.	677	IX	4351
181	.....do.....	Southern Pacific Co., lines in Oregon—Automatic block signals, fuel oil plants, track scales.	677	IX	4351

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182	O'Brien	Southern Pacific Co., lines in Oregon—Turntables.	677	IX	4353
183	.....do.....	Southern Pacific Co., lines in Oregon—Fencing and cattle guards, sidetracks.	677	IX	4353
184	.....do.....	Southern Pacific Co., lines in Oregon—Locomotive equipment, etc.	677	IX	4354
185	.....do.....	Southern Pacific Co., lines in Oregon—Statement of expenditures for additions, betterments, and improvements, from July 1, 1909, to Nov. 30, 1909, and of important new work started and now under way, dating from Nov. 30, 1909.	677	IX	4355
186	.....do.....	Southern Pacific Co., lines in Oregon—Statement of new lines constructed and under way June 30, 1904, to June 30, 1909.	677	IX	4356
187	.....do.....	Southern Pacific Co., lines in Oregon—Average consist of through passenger trains, Jan. 1, 1900, to Jan. 1, 1910.	677	IX	4357
188	.....do.....	Southern Pacific Co., lines in Oregon—Statistics of freight and passenger traffic moved year 1900, compared with year 1909.	678	IX	4357
189 to 197	....do.....	Photographs, as described by witness (not printed).	678	IX	4358
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207	.....do.....	Oregon R. R. and Navigation Co.—Statement of improvements and betterments from July 1, 1900, to June 30, 1909. (Exhibit G).	678	IX	4365
208	.....do.....	.....do. (Exhibit H).....	679	IX	4369
209	.....do.....	.....do. (Miscellaneous).....	679	IX	4371
210	.....do.....	Oregon R. R. and Navigation Co., branches—Detail of loss and gain in branch-line mileage, shown on Exhibit—, rail renewals, July 1, 1900, to June 30, 1909.	687	IX	4397
211	Brewer	Statement showing physical condition of Oregon Short Line R. R., July 1, 1899, as compared with its condition July 1, 1909.	702	X	4433

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
212	Brewer	Oregon Short Line R. R. Co.—Statement showing mileage and estimated cost of sidetracks and second track built, authorized and proposed for the period June 30, to Dec. 31, 1909.	702	X	4443
213	.....do.....	Oregon Short Line R. R. Co.—Business handled by Oregon Short Line R. R. Co. between years 1900 and 1909, inclusive.	702	X	4444
214 to 228	.....do.....	Photographs as described by witness (not printed).	702	X	4444
229	**Bartholomew**	**Southern Pacific Co., Atlantic Steamship Lines.—Statement of tonnage and revenue accruing to system lines on business from and to Utah points for years shown.**	762	X	4607
230	.....do.....	**Southern Pacific Co., Atlantic Steamship Lines.—Statement of tonnage and revenue accruing to system lines on business from and to Colorado points for years shown.**	763	X	4608
231	Plaisted	Sheep movement map (not printed).	765	X	4612
232	McCormick (2).	Passenger train service via Ogden route.	797	X	4671
233	Lomax	Time of through passenger trains run in February, 1901.	806	X	4699
234	.....do.....	Time of through passenger trains run in February, 1910.	806	X	4700
235	.....do.....	Equipment passenger trains, Feb. 1, 1901.	806	X	4700
236	.....do.....	Equipment of through Union Pacific passenger trains. Feb. 1, 1910.	806	X	4702
237	.....do.....	Comparison of through passenger train time, Feb. 1, 1901, and 1910.	806	X	4704
238	Kelly	Articles of incorporation of Utah and Pacific R. R. Co.	846	X	4776
239	.....do.....	Assignment to Utah and Pacific R. R. Co.	847	X	4782
240	.....do.....	Articles of association of Utah, Nevada and California R. R. Co.	848	X	4788
241	.....do.....	Chapter 530, statutes of California, 1907.	864	X	4807
242	.....do.....	Agreement between Southern Pacific Co. and San Pedro, Los Angeles and Salt Lake R. R. Co., Apr. 15, 1907.	864	X	4810
243	.....	Statement showing additional main tracks of Atchison, Topeka and Santa Fe Ry. Co., year ending June 30, 1909.	882	X	4867
244	.....	Mileage of Northern Pacific Ry. Co. and controlled lines, June 30, 1909.	882	X	4868

Defendants' Exhibits—Continued

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
244½	.....	Map, Northern Pacific Ry. Co. (not printed).	882	X	4869
245	.....	Track statement Great Northern Ry. and proprietary companies.	882	X	4870
246	.....	Map, Great Northern Ry. Co. (not printed).	882	X	4870
247	Mahl (2).....	Union Pacific Ry. Co.—Statement of stocks of St. Joseph and Grand Island Ry. Co., owned.	882	X	4871
248	.....do.....	Union Pacific Ry. Co.—Investment stocks owned Mar. 4, 1910.	882	X	4871
249	Stebbins (3)..	**Southern Pacific Co., Atlantic S. S. Lines.—Statement of tonnage and revenue accruing to system lines on business received from China and Japan for fiscal year ending June 30, 1900.**	885	XI	4883
250	.....do.....	**Statement of total freight traffic to points in Willamette Valley, Oregon (excluding Portland), via Union Pacific System, Granger, Wyo., and Portland, Ore., from eastern territories specified for fiscal year ending June 30, 1900.**	886	XI	4884
251	.....do.....	**Statement of total freight traffic from points in Willamette Valley (excluding Portland), via Union Pacific System, Portland, Ore., and Granger, Wyo., to eastern territories as specified, for fiscal year ending June 30, 1900.**	893	XI	4891
252	.....do.....	**Statement of total freight traffic from points in Willamette Valley (excluding Portland), via Southern Pacific Co.-Pacific System and Rio Grande Western Ry. to Missouri River and east, for fiscal year ending June 30, 1900.**	896	XI	4893
253	.....do.....	**Statement of total freight traffic to points in Willamette Valley (excluding Portland), via Rio Grande Western Ry. and Southern Pacific Co.-Pacific System from Missouri River and east, for fiscal year ending June 30, 1900.**	898	XI	4895
254	.....do.....	**Statement of freight traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, having origin or destination on the line of Southern Pacific Co. north of Ashland, Ore., and south of Portland, Ore., for the calendar year 1900.**	901	XI	4898

Defendants' Exhibits—Continued.

Exhibit No.	Witness.	Description of exhibit.	Abstract page.	Printed record. Vol.	Page.
255	Stebbins (2)	Tonnage and revenue of freight traffic between San Francisco and points in Oregon, Washington, Idaho, and Montana, as specified, via Southern Pacific Co. and the Oregon R. R. and Navigation Company, for year ending June 30, 1900.	902	XI	4899
256	.....do.....	Tonnage and revenue of freight traffic between San Francisco and Montana common points, via Southern Pacific Co. and Oregon Short Line R. R. Co., for year ending June 30, 1900.	904	XI	4901
257	.....do.....	Statement of freight traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, for the years ending June 30, 1900, and 1901.	905	XI	4903
258	.....do.....	Statement of passenger traffic interchanged by Union Pacific R. R. Co. and Southern Pacific Co. at Ogden, Utah, for the year ending June 30, 1901.	906	XI	4904
259	.....do.....	Statement of revenue from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.	907	XI	4905
260	.....do.....	Southern Pacific Co. lines—Statement of revenue from operations for each fiscal year ending June 30, 1900, to 1909, inclusive.	908	XI	4907
261	Lincoln	Average miles per car per day on Union Pacific, Atchison, Topeka and Santa Fe, Great Northern, Northern Pacific, Central Pacific, Texas and Pacific, Chicago, Rock Island and Pacific, and Denver and Rio Grande, 1907-1909, taken from statistical bulletin prepared by chairman of committee of relations between railroads, American Railroad Association.	912	XI	4913
262	Ives	Letter from W. A. Drake to Epes Randolph, Apr. 23, 1907.	921	XI	4932
263	.....	Southern Pacific Co.—Memorandum in respect of disposition of proceeds from sale of two five-year 4½ per cent bonds.	926	XI	4943
264	.....	Statement of mileage, February, 1901, Ogden to Roseville, Roseville to Portland, Roseville south to California and Arizona line, Southern Pacific lines in Arizona to Mexico, Texas, Louisiana, etc.	927	XI	4944
.....	.....	Telegram W. A. Worthington to P. F. Dunne.	928	XI	4945

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Office Supreme Court, U. S.
FILED
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Clerk

No. 446.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

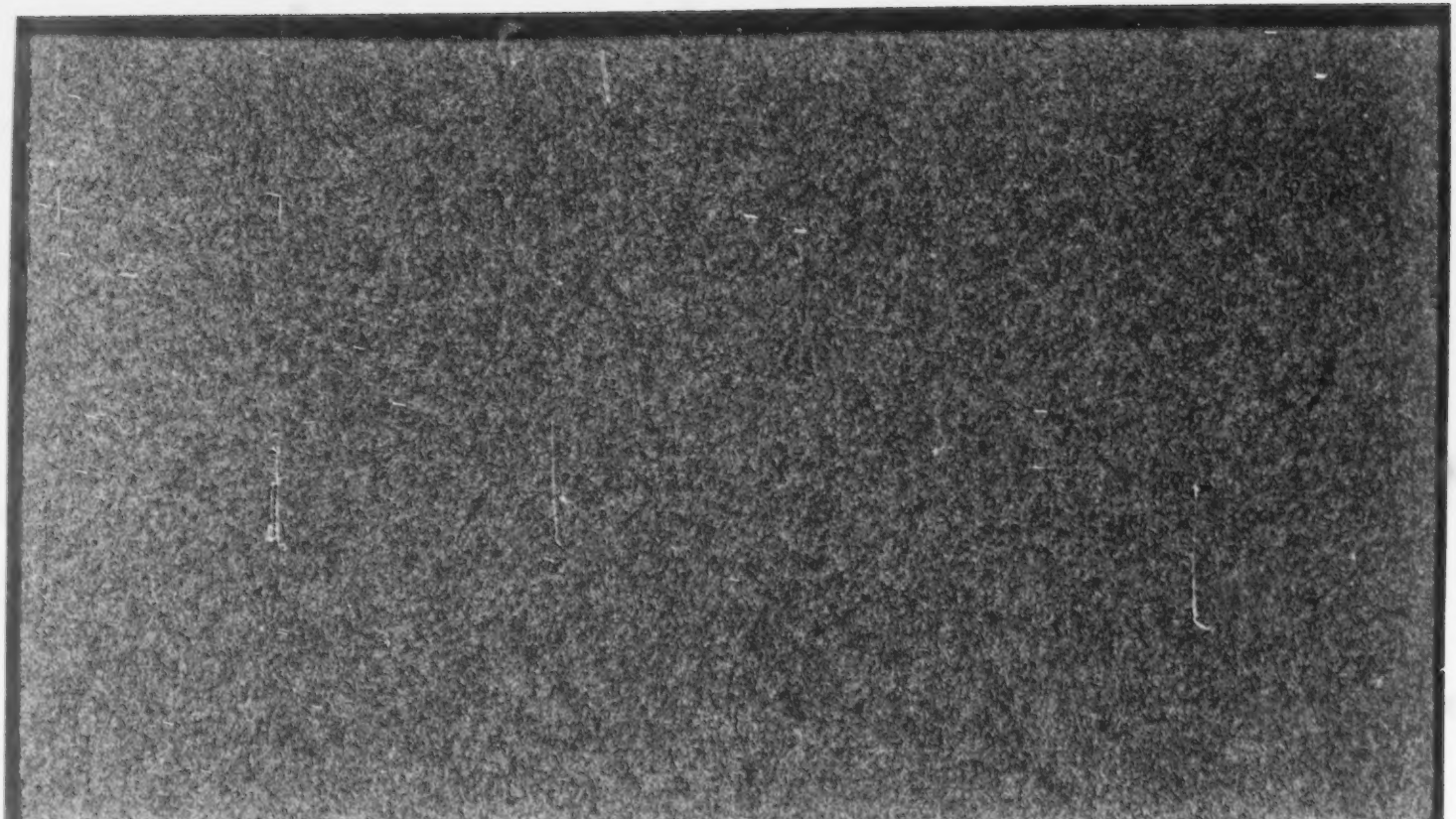
THE UNITED STATES, APPELLANT,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, APPELLANT,
v.
THE UNION PACIFIC RAILROAD COMPANY; The Oregon Short Line Railroad Company, et al. } No. ——.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

MOTION TO ADVANCE.

This suit was brought under the antitrust law of July 2, 1890, by the United States against The Union Pacific Railroad Company and its connecting lines, The Oregon Short Line and The Oregon Railroad & Navigation companies, to enjoin the said The Union Pacific Railroad Company from purchasing, acquiring, holding, or owning any stock in certain competing railroads, to wit: The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, the Northern Pacific Railway Company, and the Great Northern Railway Company. Certain directors of said companies were also made defendants. The bill charged a combination and

conspiracy between The Union Pacific Railroad Company and the said other companies and certain officers and directors to control the lines of railway and steamship competing with the Union Pacific and its competing lines of railroad and steamship and the connecting lines owned and controlled by it, to-wit: The Oregon Short Line, The Oregon Railway and Navigation, and the steamships owned and controlled by and connecting with these lines. Proofs were taken in said cause on behalf of the Government and the defendants. The Attorney General of the United States, under the authority of the act of February 11, 1903, "to expedite the hearing and determination of suits in equity * * * under the act of July 2, 1890," etc., filed a certificate stating that, in his opinion, the case was of general public importance. It was accordingly heard before the four circuit judges of the ninth circuit in the month of October, 1910, and on the 24th day of June, 1911, the said court rendered its final judgment and decree dismissing said bill of complaint upon the merits.

The case is one of those the expedition of which is provided for by the act of February 11, 1903, presenting, as it does, the question of the legality of the control of The Union Pacific Railroad Company over the railroads and steamship lines of The Southern Pacific Company and The San Pedro, Los Angeles and Salt Lake Railroad Company and stock ownership in and control exercised over vari-

ous other competing lines of railroad, and the question of the suppression of competition in a large territory comprising nearly one-half of the territory of the United States and steamship competition between this country and the Orient, and the question of monopoly in the control of transportation lines in said territory and the early determination thereof is of very great importance.

On behalf of the Government I therefore respectfully ask that the case be advanced and assigned for hearing as soon as the convenience of the court will permit.

F. W. LEHMANN,
Solicitor General.

OCTOBER, 1911.

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CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 446.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.,
Respondents.

APPELLANT'S BRIEF OF FACTS

GEO. W. WICKERSHAM,
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CORDENIO A. SEVERANCE,
FRANK B. KELLOGG,
Special Assistants to the Attorney General.

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Cory	405	2503
Blum	405	2514
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the Pacific Mail Steamship Co., which forms part of the Panama Route from New York to San Francisco, and in addition, an influential voice has been secured in the management of the Atchison, Topeka & Santa Fe Railway Company. The location of these various lines of railway is shown upon the official map of the Union and Southern Pacific systems for 1908, which appears in the record, Volume 3, opposite page 1015. The lines of the Atchison, Topeka & Santa Fe are shown upon this map, but appear more prominently upon the official map of that system, which will be found in the record, Volume 3, opposite page 1049.

(a) It is admitted by the pleadings and established by the proof, that the Union Pacific system, prior to the year 1901, may be briefly described as follows:

Two lines of railway leading from the Missouri River gateways, one from Omaha, a distance of a trifle over a thousand miles, to Ogden, Utah; another from Kansas City to Denver, with a line from Denver to Cheyenne. These lines, together with certain branches and connections were owned directly by the Union Pacific Railroad Co By stock ownership that company also owned and controlled the Oregon Short Line Railroad Co., the tracks of which leave the main line of the Union Pacific at Granger, Wyoming, thence running in a northwesterly direction through Pocatello, Idaho, to Huntington, Oregon, at which place they connect with the lines of the Oregon Railroad & Navigation Co., owned by the said Oregon Short Line Railroad Company through stock ownership, which latter lines extend to Portland, with a branch from Umatilla to Spokane, Washington and other small branches, thus giving the Union Pacific a through line from the gateways at the Missouri River to the Pacific by way of Portland. The Oregon Short Line

also owned several hundred miles of railroad in southern Utah, and its lines extended though Salt Lake and Ogden north through Pocatello to Silver Bow, Montana.

The Oregon Railroad & Navigation Co. owned a line of steamships in active service between San Francisco and Portland, which steamships were run in connection with its rail lines, and did a large amount of local and through business, both freight and passenger. The Union Pacific owned a half interest in the Occidental and Oriental Steamship Line running from San Francisco to ports in the Orient. The Oregon Railroad & Navigation Co. also organized the Portland & Asiatic Steamship Co. early in 1901, prior to the acquisition of the stock of the Southern Pacific by the Union Pacific, which steamship company operates a line of ships between Portland and points in the Orient. The boats of this company continued a steamship service between Portland and Oriental ports that had existed under traffic agreements between said Oregon Railroad & Navigation Company and various vessel owners for several years prior to 1901.

(b) It appears by the pleadings and proofs that the Southern Pacific Co., prior to 1901, through stock ownership or otherwise, owned and controlled the operation of a line of railroad reaching from New Orleans in Louisiana on the Mississippi River, through Louisiana, Texas, New Mexico, Arizona, California and Oregon, to Portland, reaching Los Angeles and San Francisco. A line in Texas also reached tidewater at Galveston, and other branches extended to various points in Northern Texas, there connecting with the lines of other companies running to Colorado terminals, St. Louis and Kansas City.

The Southern Pacific, also by stock ownership, and lease, owned and operated the line of road originally constructed

by the Central Pacific Railroad Company, extending from San Francisco to a connection with the lines of the Union Pacific Railroad Co. and the Denver & Rio Grande Railroad Co. at Ogden.

The Southern Pacific also owned and operated a line of steamships in connection with its rail lines plying between New York and New Orleans, and since 1903, the ships have also made the port of Galveston. The Southern Pacific was furthermore the owner of a majority of the stock of the Pacific Mail Steamship Co., which owned a line of ships plying between San Francisco and points in the Orient, and also ships plying between San Francisco and Panama, which with the Panama Railroad and the ships of the Panama Railroad Co. on the Atlantic side of the Isthmus, made up the through line from New York to San Francisco that has for many years been known as the Panama Route. Thus the Southern Pacific controlled two routes from New York to San Francisco, and one route from New York to Portland, and owned the line reaching from Ogden to San Francisco over which the California business of the Union Pacific and the Rio Grande moved, except such business as the Union Pacific sent down by boat from Portland.

(c) The Atchison, Topeka & Santa Fe Railway Co. was and is the owner of a line of railroad extending from Chicago, Illinois, through Illinois, Iowa, Missouri, Kansas, Colorado, New Mexico, Arizona and California, to tidewater at San Diego and San Francisco, also reaching Los Angeles.

(d) The Northern Pacific Railway, which the conspirators unsuccessfully endeavored to control, extends from Ashland, Wisconsin, and Duluth, Minnesota, on Lake Superior, and St. Paul, Minnesota, on the Mississippi River,

to Portland, Oregon, by way of Seattle and Tacoma on Puget Sound, at which latter places it connects with the Pacific Coast Steamship Co. operating a line of ships between Sound ports and San Francisco. The Northern Pacific in the spring of 1901 and prior to the attempt of these conspirators to acquire control of the same, had purchased jointly with the Great Northern Railway Co. the stock of the Chicago, Burlington & Quincy Railway Co., which latter corporation possessed a very large system of railroads, having its eastern terminus at Chicago, northern terminus at St. Paul, western termini at Billings, Montana, where it connected with the Northern Pacific, and at Denver, Colorado, and reaching Kansas City in the south and having among others, lines running from Kansas City to Denver, and from Omaha to Denver.

(e) In the year 1900 the defendant William A. Clark and his associates perfected arrangements for building a line of road from Salt Lake City to Los Angeles, connecting there with a short road owned by a corporation known as the Los Angeles Terminal Railway running from Los Angeles to tidewater at San Pedro, the stock of which they controlled. The construction of this road was commenced in the spring of 1901. It was interfered with and its projectors were harassed in the manner stated in the petition and established by the proofs, to be hereafter discussed, until after a considerable part of the road had been constructed. In the summer of 1902 an amalgamation took place under a contract made between the late defendant, Harriman representing the Union Pacific interests (which were actively building a line paralleling the San Pedro), and the said Clark representing himself and his associates, by which the Oregon Short Line, a sub company of the Union Pacific, turned over to the San Pedro, Los Angeles and Salt

Lake Railroad Co., which had been organized by Clark and his associates, and which was constructing the said line of railroad, all of its lines south of Salt Lake City, in Utah, and Nevada, being several hundred miles in extent, and the balance of the road that had not already been built was completed, with the exception of short lines of track in Southern California leased from the Atchison Co. and the Southern Pacific Co. Said Harriman having died pending the trial of this suit the defendant Robert S. Lovett as Trustee was by order of Court made a party defendant as he had succeeded said Harriman as Trustee under the contract Exhibit "B" attached to the petition. By this means the defendant San Pedro, Los Angeles & Salt Lake Railroad Co. about the year 1905, opened for traffic a new line from Salt Lake to Los Angeles and San Pedro, over which line the Union Pacific has exercised the control through officers, directors and traffic agreements hereinafter set forth. This line is shown in green on the map of the Union Pacific-Southern Pacific systems opposite page 1015. It will be observed that the lines of road above described constitute the sole means of reaching the Pacific Ocean south of Puget Sound, with the exception of the Western Pacific line which has been completed since the commencement of this action. As we have said, the conspiracy failed as to the Northern Pacific. It has succeeded as to the balance.

The lower court dismissed the bill on the merits, three judges concurring in that conclusion, Circuit Judge Hook dissenting (188 Fed. Rep. p. 102). The majority of the court fell into error with reference to the facts in a number of particulars. The discussion of the opinion of the trial court and the mistakes as to the facts therein contained will be found at page 604 of this brief.

TRANSCONTINENTAL RATE SITUATION AND GENERAL CONSIDERATIONS AFFECTING CONTROVERSY.

An inspection of the map shows that there are comparatively few transcontinental railroads. The portion of the United States East of the Missouri River is, and was at the time of the formation of the conspiracy complained of, gridironed with railroads, but from that line to the coast the railroads are few. Rates to the coast break either at the Missouri River, at the lower Mississippi River crossings or at St. Paul, and the lines running westerly to the coast from those crossings are commonly known as transcontinental railroads. The length of such lines is about two thousand miles more or less. The railroads to the East of these crossings converge at certain points, at which they interchange business with the transcontinental railroads. There have been some changes since 1901; as for instance, the construction of the new line of the Chicago, Milwaukee & St. Paul to Puget Sound, and the building of the Western Pacific from Salt Lake to San Francisco; but viewing the situation as it existed in the spring of 1901, it will be seen that at certain points railroads from the East brought the products of that region and delivered the same to the transcontinental lines, and at the same points received the products of the West from the transcontinental lines and distributed the same throughout the East. To illustrate, at St. Paul, the Eastern terminus of the Northern Pacific and Great Northern Railway lines, business was interchanged with a number of lines leading to the East, namely the Chicago, Burlington & Quincy, Chicago & Northwestern, Chicago Milwaukee & St. Paul, Chicago Great Western, Wisconsin Central, Minneapolis & St. Louis, and at a

later date the Rock Island. At Omaha or Council Bluffs, the Eastern terminus of the Union Pacific, business was interchanged with all of the lines above mentioned, except the Minneapolis & St. Louis and in addition with the Wabash, the Rock Island, and at a slightly later date the Illinois Central. Certain of the same lines and others, such as the Chicago & Alton, interchanged at the Union Pacific's Eastern terminus at Kansas City. At New Orleans, in addition to the interchange with the Southern Pacific's own boat line running to New York, the rail lines of that company interchanged business in large volume with the Louisville & Nashville, the Queen & Crescent, Illinois Central and other lines leading to the central and Eastern parts of the United States. There were also certain junction points in Texas such as San Antonio and El Paso at which the Southern Pacific interchanged a large amount of business with lines leading to the East and North. The transcontinental lines reaching the Pacific Coast in 1901 were the Canadian Pacific, the Great Northern, the Northern Pacific, the Union Pacific, the Atchison, Topeka & Santa Fe, and the Southern Pacific. All of these lines, as we will later show, were more or less competitive on transcontinental traffic. Naturally the competition was the most severe between such lines as reached most directly the same portion of the Pacific Coast territory. The Great Northern and Canadian Pacific, each extended to Puget Sound, but neither of them then reached Portland over its own rails, but the Northern Pacific, the Union Pacific and Southern Pacific all had Portland as their Western terminus. The Southern Pacific, and the Atchison, Topeka & Santa Fe reached San Francisco with their rail lines and the Union Pacific by boat line from Portland. We will later in this brief discuss in detail, with references to the testimony, the actual

competitive relations existing between these various lines having their Western termini at Portland and San Francisco and other California points, and we will show that they were engaged in an active energetic competition. Without now discussing that question fully, it may be said that there is no dispute that vast quantities of traffic were taken to Portland by the Northern Pacific, by the Union Pacific and by the Southern Pacific, the latter company handling traffic into Portland both by its Sunset Route, so-called, and from Ogden to Sacramento, and thence north to Portland. It is also undisputed that traffic moved Easterly from Portland and vicinity by these three systems. Whatever may be the situation as affected by other considerations which we will hereafter discuss, no one denies that traffic in either direction could move between Portland and vicinity in the West and practically all points East of the Missouri River in the East by any one of these routes, and usually at the same rates, all transcontinental rates being made in conference where each independent line had a voice and vote. (Stubbs' testimony, Fol. 3332; Paul Morton, Fols. 1391, 1399, 1403; Hawley, Fol. 1435.)

There is also no dispute in the evidence, that as to business moving between San Francisco and points in the East, the Southern Pacific endeavored to send the same, by New Orleans or El Paso. The Santa Fe sought to secure it for its line, and the Union Pacific for the direct line from the Missouri River to San Francisco, as it participated in the haul to the extent of a thousand miles, namely to Ogden if it moved that way, the balance of the haul to or from San Francisco being over the short line of the Southern Pacific. Traffic could move by any one of these three routes upon an equal tariff. In considering the acts of the parties in the premises, the independence of each line, so

long as it remained separate and distinct, and the power of the said lines over rates, it must never be lost sight of that it is shown by the undisputed testimony that *all transcontinental rates were the same and that a reduction in the rate to any coast point by any line would at once force a like reduction to all points.* Mr. Stubbs, chief traffic officer of the defendants Union Pacific and Southern Pacific, said:

> "Let the rate be cut on the Great Northern and it goes down to the Gulf of California."
> (Stubbs, Fol. 3268.)

Then again, when he was being examined with reference to the possibility of the Union Pacific cutting rates into San Francisco over its rail line to Portland and its boat line from thence to San Francisco, he gave the following testimony:

> "Q. If such an attempt had been made, and as a matter of retaliation the Union Pacific had taken advantage of its Portland boat line and had cut the rates, then as I understood you to testify this morning, that would have resulted in cutting rates all along the line, over all routes, as you said in your usually eloquent—
>
> A. Well, whether I said so or not, I say so now.
>
> Q. That would have involved a loss to the Southern Pacific of its rates on the enormous traffic going over the Sunset Route, would it not? That is true, if it was cut all along the line?
>
> A. Why, if it was cut it would be cut everywhere, yes." (Fols. 3321-2.)

Mr. Markham, of the Missouri Pacific, gave similar testimony (Fol. 3710), as did Mr. Babcock, formerly Vice President of the Denver & Rio Grande. (Fols. 3945 and

6.) The reason for this relation and interdependence of rates is perfectly evident. All of the coast cities from San Diego to Vancouver are reached by ships which can handle certain of the traffic between the Atlantic seaboard and the Pacific Coast. This would of itself have great influence in producing a parity of rates, but the controlling feature, as was stated by some of the witnesses, is that the merchants in the large jobbing cities of the coast are distributing into the same territory; as, for instance, jobbing houses in Seattle and Tacoma reach the same territory as those located in Portland, and to some extent the houses located in San Francisco. Portland and San Francisco jobbers are likewise in competition in common territory, as are the jobbers of San Francisco, Los Angeles and San Diego. All of these merchants demand and the railroads concede the same through rates from the East as are enjoyed by their competitors in business. So there is no doubt that on transcontinental business each through line reaching one of these terminal points from the Missouri River crossings has a voice in making the through rate. Not only do these transcontinental lines each have a voice in making the through rates, but they substantially control the making of transcontinental rates from the Atlantic seaboard to the Pacific Coast. On account of the larger interest of the lines West of the Missouri River the connections of those lines to the East have practically left the making of transcontinental rates to the few lines west of the river. This is undisputed. See testimony of Mr. Munroe, Freight Traffic Manager of the Union Pacific. (Fols. 6829 & 30.) The rates west of the Missouri River are so high that if necessary any line starting from the river could even handle business from the East on the sum of the locals and still have a margin. (Markham, Fols.

3709-11.) These lines being so few in number and the fast growing territory served by them being so vast, the prohibitions of the Sherman Act should be applied to them with the utmost rigor. Mr. Buchanan of Cincinnati, the traffic manager of Proctor & Gamble, the great soap manufacturers, and who before his connection with that concern, was Assistant General Freight Agent of the Big Four Railroad, when being interrogated on cross examination as to the reason for his opinion that the shipper would be benefited by the Southern Pacific and Union Pacific having separate traffic organizations, said:

> "I think where there are strong systems that are separate, the shipper stands a better chance. I think it is obvious that he would, even with the best intentions on the part of the traffic managers of the larger systems: that he stands a better chance of getting a fairer hearing on any question that he will bring up, less chance of an unreasonable rate or unreasonable rules and regulations." (Fol. 2358.)

We discuss this matter fully and call attention to the testimony of a large number of witnesses later in this brief.

In addition to this situation as to transcontinental business, at the time of the formation of the conspiracy the Southern Pacific had a rail line between Ogden, Utah, the terminus of the Union Pacific, and Portland, by way of Sacramento. The Union Pacific had a line between the same points. Without going into the question of the competition of these two lines in detail, which will be done later, it is undisputed that traffic could move and did move between said termini over each of these lines, and there were no other lines of railroad connecting these two destinations. It is also undisputed that in 1901, the only rail

line between San Francisco and Portland and the points in the vicinity of each was the Southern Pacific, and the only regularly established line of boats, freight and passenger, between San Francisco and Portland at that time, was the boat line owned, controlled and run in connection with the Union Pacific. Without now discussing the extent of the competition between this boat line and the rail line, which will be treated later, it is undisputed that traffic, both freight and passenger, could and did move by both lines between Portland and San Francisco in large volume. Previous to the time of the conspiracy complained of, the Southern Pacific had acquired a majority of the stock of the Pacific Mail Steamship Co., which had a line of ships forming the Pacific end of the Panama Route from New York to San Francisco, and also plying between San Francisco and China and Japan. It had a half interest, the Union Pacific owning the other half, in the Occidental & Oriental Steamship line with ships making the same ports as the Pacific Mail from San Francisco. The Union Pacific had for years maintained a line of boats under various contracts with ship owners, plying between Portland and the same points in the Orient reached by the Pacific Mail boats, and just previous to the merger of the Union Pacific and Southern Pacific systems the former had incorporated the Portland & Asiatic Steamship Co., (the stock of which was owned by a subsidiary of the Union Pacific) for the purpose of operating ships between Portland and the Orient in connection with the rail lines of the Union Pacific. Without now going into detail as to the competition between these respective lines of boats, it is enough to say that traffic to the Orient from all parts of the United States East of the Missouri River could and did move by all of the lines mentioned, and that traffic from the Orient destined to points East of

the Missouri River could and did move by all of the said lines. It is further undisputed that previous to the conspiracy mentioned the Southern Pacific with its boat line from New York to New Orleans, and its rail line from there to Fort Worth in northern Texas, actively and successfully solicited and obtained the carriage of a large amount of traffic bound from New York to Colorado and Utah common points, which was turned over to the Colorado Southern at Fort Worth, and if destined to Utah points was by it in turn ordinarily delivered to the Denver & Rio Grande, a competitor of the Union Pacific running between Denver and Grand Junction, and in connection with the Rio Grande Western, which it afterwards acquired, reaching Salt Lake City and Ogden. The Union Pacific at the same time in connection with water lines from New York to Newport News and other South Atlantic ports and the rail lines from those ports to the Missouri River crossings, was actively seeking and participating with its said connections in the carriage of a large amount of traffic bound to Colorado and Utah common points which it was able to deliver over its own rails. Without now discussing the details of this competition, it is sufficient to say that traffic in large volume moved over both of these routes at differential rates below the all rail rates, which differentials were uniform; and in addition the Union Pacific with its connections East of the Missouri River was also handling traffic into Colorado and Utah common points all rail. It is also undisputed that at that time traffic was moving from San Francisco to Montana, Idaho and Washington points, both over the Southern Pacific lines and connections, and over the Union Pacific boat and rail lines and connections. Without now discussing the details of that

competition, there is no controversy as to the fact that the traffic did move over both of these routes at equal rates.

The San Pedro, Los Angeles & Salt Lake Railroad was not then in operation, not being finally completed and opened as a through line until 1905. A portion of the line, namely, that from San Pedro to Los Angeles, with certain branches, had been constructed some years previously, and had been purchased by Senator Clark and his associates, who in 1900, projected the new line of railway; and in the early spring of 1901 surveying and construction were actively in progress at different points. The Atchison, Topeka & Santa Fe Railway in the spring of 1901 extended through from Chicago to San Francisco, with numerous branches, making tidewater at San Diego as well as San Francisco. Among its branches a very important one was known as the Sante Fe, Prescott & Phoenix Railway, which extended from Ash Fork on the main line in Northern Arizona in a southerly direction through the center of that territory to Phoenix. The latter point was also reached by a short branch of the Sunset Route of the Southern Pacific running North from Maricopa. The testimony is undisputed that the Santa Fe was a competitor of both the Southern Pacific and Union Pacific. Thus having sketched very briefly the transcontinental situation, we will now consider what was done by the defendants with reference to an amalgamation of all these great interests and the combination of the same in the hands of the individual defendants and the defendant Union Pacific Railroad Company and its subsidiaries, the Oregon Short Line, of which it owns all the capital stock, and of the Oregon Railroad & Navigation Company, the stock of which is owned by the Short Line. In entering upon a discussion of this matter, without repeating what is set forth in our brief of the law, it may be useful to observe that

great railroad systems of thousands of miles in length which are, as to a very considerable portion of their business necessarily monopolies in and of themselves, stand in a different position before the law, and the application of the statute is much plainer as to them than in the case of ordinary traders. This was pointed out in the briefs of counsel for defendants in the Standard Oil Case, (221 United States, 15,) and in the American Tobacco case, (221 United States, 135) see also the concurring opinion of Mr. Justice Brewer, *Northern Securities Co. v. United States*, 193 U. S. 407.) That this court is now impressed with the same thought is evident from the language of the learned Chief Justice in the opinion in the Standard Oil case, where, in discussing, and to a certain extent, limiting some of the general language in the Freight Association case, he said:

> "The confusion which gives rise to the question results from failing to distinguish between the want of power to take a case which, by its terms or the circumstances which surrounded it, considering among such circumstances the *character of the parties*, is plainly within the statute, out of the operation of the statute by resort to reason, in effect to establish that the contract ought not to be treated as within the statute, and the duty in every case where it becomes necessary *from the nature and character of the parties* to decide whether it was within the statute to pass upon that question by the light of reason." (221 U. S. 67.)
>
> (The italics are ours.)

And again, on the same page, the opinion proceeds:

> "And in order not in the slightest degree to be wanting in frankness, we say that in so far, however, as by separating the general language used in the opinions in the Freight Association and Joint Traffic cases from the context and *the subject and*

parties with which the cases were concerned, it may be conceived that the language referred to conflicts with the construction which we give the statute, they are necessarily now limited and qualified."

(The italics are ours.)

The court also explained the language in those cases as follows:

"The rulings in the case relied upon when rightly appreciated were therefore this and nothing more: *That as considering the contracts or agreements, their necessary effect and the character of the parties by whom they were made, they were clearly restraints of trade within the purview of the statute, they could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made.*" (221 U. S. 65.)

(The italics are ours.)

The transactions of the defendants to which we will now call attention, when viewed in the light of the subject matter and the parties, the two considerations most prominently mentioned by this court in the case just referred to, inevitably lead to the conclusion that from the beginning there existed in the minds of the individual defendants a deliberate intention to eliminate competition in transcontinental transportation and to monopolize the same or the great part thereof, thus necessarily restraining the liberty of action of such carriers, and restraining the trade and commerce of the public patronizing such railway lines. The evidence establishing this conclusion is discussed at pp. 566 et seq. of this brief. It is impossible to exaggerate the far-reaching effects of this conspiracy and its partial success. The territory traversed by

these various lines which were the subject of the conspiracy, is the portion of the United States containing the fewest inhabitants in proportion to its area, and which in 1901 gave clearest evidence of the prospective development that has since taken place, and which is constantly increasing in momentum. Deserts are being turned into gardens, great cities are being built. New settlers by the hundreds of thousands are rushing in to make homes, and while this development has been checked as to one vast region by the scandalous failure of the parties to this conspiracy to aid in its development by extending their lines of rail into the same, to-wit, the enormous territory in Central Oregon, nevertheless, the growth and increase in population and wealth has been vast during the past ten years. If instead of the amalgamation of the Union Pacific and Southern Pacific lines they had remained separate and, by the play of the ordinary forces of competition had developed the Oregon territory instead of taking the vast revenues accruing from the existing lines in that part of the country and carrying them off to New York to invest in stocks of railroad companies three thousand miles away, (the Oregon Railroad & Navigation Co. paying regular dividends on its preferred stock from 1901 on, and in 1908 an additional dividend of 77% upon the preferred stock, and 79% upon its common stock, and the following year 14½% on preferred and 12½% on common stock and in 1910 13% upon preferred stock and 15% upon common stock), the western development would have been infinitely greater; but in spite of this treatment extended to a great region which was enclosed by the lines of this combination, the growth of the West has been such, and will in the future be such, that the transportation lines which had long been independent of each other in that territory, should have so

remained. This would have prevented the injury to the public which always results from monopoly, as pointed out by this court in the Standard Oil opinion, from which we again quote:

> "The evils which led to the public outcry against monopolies and to the final denial of the power to make them may be thus summarily stated: (1 The power which the monopoly gave to the one who enjoyed it to fix the price and thereby injure the public; 2 the power which it engendered of enabling a limitation on production; and 3 the danger of deterioration in quality of the monopolized article which it was deemed was the inevitable result of the monopolistic control over its production and sale." (221 U. S. 52.)

As we will hereafter show, the transactions in question here have resulted in each one of the three evils enumerated: 1. Rates have been grossly increased; 2. Construction of new lines into competitive territory has been prevented; 3. The service, instead of being bettered, as has been the rule in other parts of the United States, has sensibly deteriorated.

UNION PACIFIC-SOUTHERN PACIFIC.

The defendant Union Pacific Railroad Company was taken out of the hands of receivers and reorganized pursuant to a plan and agreement dated October 15, 1895, (Complainant's Exhibit 109, Fols. 1757, et seq.), which organization was completed in December, 1897. (Millar, Fol. 11). The defendant Schiff was one of the reorganization committee, and Kuhn, Loeb & Co., bankers of New York City, of which defendants Schiff and Kahn are both members, were the bankers of the committee. This reorganization involved only the lines from the Missouri River to Ogden, together with certain branches. Later the stock of the Oregon Short Line was acquired by it, that company owning a majority of the stock of the Oregon Railroad & Navigation Co. The balance of the securities of these two lines was acquired in 1899. (Comp. Exhibit 16, Fols. 101 et seq.). This exhibit is the record of a meeting of the board of directors of the Union Pacific Railroad Co. held on August 29th, 1899. At that time the late E. H. Harriman, one of the original defendants in this case, was chairman of the executive committee, and he advocated before this meeting the purchase of the remaining securities of the Short Line and the Oregon Railroad & Navigation Co. by the Union Pacific. Among other things the record discloses the following:

> "He stated that the acquisition of the Navigation preferred stock and the Short Line B bonds on the basis indicated would secure the control of the Navigation property *and complete the extension of this company's system to the Pacific Coast.*" (Fol. 103.)

And at the same meeting it was voted to buy these securities, and in the preamble to the resolution we find the following language:

"Whereas the lines of railroad of said Oregon Short Line Railroad Company, the said The Oregon Railroad & Navigation Company, constituting extensions and auxiliary lines of the railroad of this company and are not parallel or competitive therewith." (Fol. 105.)

Previous to the receivership of the Union Pacific, the Oregon Short Line and the Oregon Railroad & Navigation line had both belonged to the old Union Pacific Company, and therefore, then as now, the Union Pacific line reached from the Missouri River to the Pacific Ocean. This control of the subsidiary companies was lost under the receivership, (all of the companies being in the hands of receivers), and was regained in the manner above stated.

From this it appears that the reorganized Union Pacific system as a transcontinental line was completed to the Pacific Coast, to use Mr. Harriman's language, in August, 1899. At that time among the directors were Mr. Harriman, and the defendants Kahn, Schiff and Stillman; also Mr. George J. Gould, whose relation to certain transactions will be commented upon hereafter. The executive committee consisted of Mr. Harriman, Mr. Gould, Mr. Marvin Hughitt, defendant Kahn, Mr. Pierce, the then general counsel of the company, and defendant Stillman. The same gentlemen were elected on the executive committee November 8, 1900, and with the exception of Mr. Pierce they continued until the resignation of Mr. Gould June 20, 1905, and in April, 1906, the defendant Frick was elected a member of the executive committee, he having been a member of the board since October, 1904. Henry H. Rogers, one of the original defendants, who died pending the trial of this case, was elected a member of the board in October, 1901, and continued to serve until his death. (See Fols. 12 to 16.)

The Interstate Commerce Commission conducted an investigation into the relations between these various transcontinental lines, and during the progress of that investigation the defendant Kahn testified concerning said matters, and his testimony by consent was made part of the record in this case. At Folio 1990 he stated that from the time of the reorganization of the Union Pacific down to that date, February 27, 1907, his bank (Kuhn, Loeb & Co.), had been the fiscal agents of the Union Pacific. Defendants Schiff and Kahn retired from the Union Pacific board in 1906, but late in 1909 defendant Kahn again became a member of the board and of the executive committee. (Fol. 7886.) After the death of Mr. Harriman in the fall of 1909, defendant Schiff again went on the board, but later on resigned, his place being taken by his son Mortimer L. Schiff, also a member of the firm of Kuhn, Loeb & Co., and as such a partner of his father and defendant Kahn. (Fols. 7888 & 9.) The years 1900 and 1901 were the years when the idea of amalgamation was widespread in the financial world. Combinations of previously competing companies were the order of the day. This is made manifest by many cases that have been before the courts. The Sherman Law was being ignored. Common directors among competitors were usual. Community of interest was a watchword in financial circles. Mr. Gould was on the executive committee of the Union Pacific. About this time he acquired control of the Denver & Rio Grande, which road is referred to in the opinion of the majority of the trial court as "a potential and later an actual powerful rival for the same business" (transcontinental business) Record Vol. 12, p 311, and Mr. Harriman became a member of the board of that corporation and so remained until 1905, (Fols. 383-4), when he withdrew, and Mr. Gould likewise withdrew from

the Union Pacific. These joint withdrawals were occasioned by the fact that Mr. Gould being interested in the Denver & Rio Grande, and the Rio Grande Western, deemed it for his interests to assist in building the Western Pacific, an action which apparently met with the earnest disapproval of Mr. Harriman. (Fol. 384.) We call attention to the general situation in 1900 and 1901 because it bears upon the motives and intent of the various parties to this conspiracy. The acts by which the defendants sought to obtain practical domination of the transportation interests of half a continent followed one after the other during that time, with startling rapidity.

Purchase of Southern Pacific Stock.

For many years previous to his death in August, 1900, Mr. C. P. Huntington and his associates had controlled the Southern Pacific Company. One of his intimate financial and personal friends was Mr. Edwin Hawley. He had been associated with Mr. Huntington for nineteen years, and testified with relation to that matter, as follows:

> "Q. How close and intimate were your relations with him?
>
> A. Quite close.
>
> Q. As compared with his other associates in business here in New York, how were they?
>
> A. Probably to a greater extent than almost any other man." (Fol. 8243.)

He further testified that he was particularly associated with him in connection with the Southern Pacific both in charge of the traffic of that company in the East, and as a stockholder, and that a short time prior to Mr. Huntington's death he joined with him in purchasing the so-called Crocker stock in the Southern Pacific, that interest having

at one time owned a quarter of the capital. This purchase was made among other things for the purpose of maintaining control of the company. Mr. Huntington by his will gave to his widow two-thirds, and to his nephew H. E. Huntington one-third of all Southern Pacific stock owned by him. (Fol. 8301.) Acting for those beneficiaries and himself, Mr. Hawley sold 475,000 shares of stock in the Southern Pacific Company to Mr. Harriman acting for the Union Pacific, in February, 1901. (Fols. 8246-7-50.) While Mr. Hawley sold the stock to Mr. Harriman for the Union Pacific, for some reasons probably satisfactory to them the stock was passed through the fiscal agents of the company, Kuhn, Loeb & Co., and upon the face of the papers that firm became the owner of the same, and in turn within a few days sold it to the Railroad Company at an advance of $2.50 per share. (See Comp. Exhibit 17, Fols. 111 et seq.) It should be said in this connection that it was claimed by Mr. Kahn on the stand that the purchase of the stock was made by his firm as fiscal agents for the company with the cooperation of Mr. Harriman. (Fols. 1991 & 7908.) We will later on comment on Mr. Kahn's testimony with reference to this matter, but for present purposes it is unnecessary to do more than call attention to the resolution of the board of the Union Pacific. (Comp Ex. 17, Fols. 111 et seq.) This record of the meeting of the board embodies an offer made on February 4th, 1901, by Kuhn, Loeb & Co. to the executive committee, offering to sell to the Union Pacific 750,000 shares of stock of the Southern Pacific Co., which offer was accepted, the price being fixed. It was also provided that there be issued one hundred million dollars of bonds of the Union Pacific; that forty millions par value were to be sold to pay for the stock of the Southern Pacific Co. Upon the terms provided the

forty millions of bonds would net thirty-eight million dollars as the bonds were to be underwritten by Kuhn, Loeb & Co. or a syndicate to be formed by them, which was to receive a commission of 2½%, or one million dollars, and in addition to that for their individual services Kuhn, Loeb & Co. were to have another million dollars. In this way the money was provided to pay Kuhn, Loeb & Co. for the stock upon which they received a profit of $2.50 a share or $1,875,000. Kuhn, Loeb & Co. were also given the option to take upon like terms any additional bonds of the said issue that might be sold by the company prior to May 1, 1906, and did so. Mr. Harriman's testimony given before the Interstate Commerce Commission, was read into the record. He testified that the proceeds of the forty millions of bonds were used to pay for the Southern Pacific stock, and the other sixty millions were held for the purposes of the corporation, and were actually used to pay for the stock of the Northern Pacific, which we will discuss later. (Fols. 1263 & 4.) Mr. Harriman testified that the purpose of purchasing the first 750,000 shares of Southern Pacific stock was to acquire a dominating interest in that company, and that they thought it was not necessary to buy a majority, but could control just as well with a minority. (Fols. 1269-70.) That naturally resulted from the fact that the organization of the property went with the purchase, and having control of the books so as to obtain proxies it was practically certain that so large a holding would result in continuous control, the balance of the stock being scattered. The total outstanding Union Pacific stock at that time was 1,978,090 shares, and at the annual election April 3, 1901, the 750,000 shares were voted by Mr. Harriman for the board that was elected. Of the total stock present and voting this did not constitute

quite a majority. At the meeting in 1902 it was nearly a majority. Between that meeting and the one in 1903, 150,000 additional shares were purchased, the reasons for the purchase (to guard against loss of control) being given by Mr. Kahn in his testimony. (Fols. 7884 & 5.) This made 900,000 shares in March, 1903, and at the meeting in April, 1903 these 900,000 shares appear to have been voted by the Oregon Short Line, a subsidiary of the Union Pacific. (Comp. Ex. 2, Fol. 23.) The transfer of the stock from the Union Pacific to the Oregon Short Line is evidenced by resolutions passed at the executive committee meeting. (Comp. Ex. 27, Fol. 145), the same being in reality only an exchange of securities; but as the stock of the Oregon Short Line is entirely owned by the Union Pacific, the control by that company was unaffected by the nominal change. Since 1903 the Southern Pacific stock held by the Oregon Short Line has been an actual majority of all the stock present and voting at any annual meeting, and is undoubtedly, for purposes of control, more than ample (Comp. Ex. 2, Folios 23 and 24). Early in 1910 74,000 additional shares were bought as part of a proposed purchase of 154,000 shares, which latter amount would have made a clear majority of the stock of the Southern Pacific. This purchase was not made for the purpose of solidifying the control, but by reason of the fact that the defendants had information that a law would be passed by Congress legalizing the ownership of stock in a competing railway company, provided said ownership comprised a majority of the stock of such competitor. When it was learned that the law would not be enacted purchases ceased with the 74,000 shares above mentioned. (Kahn's testimony, Fol. 7903.) The witness Kahn testified that as things ordinarily go, anyone who has 30% of the stock

of a large railroad corporation, would, under normal conditions control the corporation. (Fol. 2040.) Thus the Union Pacific acquired the absolute control and management of the great Southern Pacific Co. by this stock purchase, thus putting an end to all competition between the two systems, and by reason of the added influence it thus obtained because of its ability to divert traffic to connections, some of them also competitors, it immediately assumed a dominating position in connection with transcontinental traffic.

Control of Panama Route.

Not only was this true as to the control of the lines of the Southern Pacific, but it also secured control of the Panama Route, as the Pacific Mail formed a necessary and indispensable link in that route. The Southern Pacific then owned and still owns $10,010,000 par value out of the $20,000,000 par value of the capital stock of the Pacific Mail Steamship Co. (Mahl, Fol. 425.) This was a situation well known to the defendants, as according to the testimony of Mr. Schwerin, the Vice President and General Manager of the Pacific Mail, quite a block of the Southern Pacific holdings of Pacific Mail were bought from the late defendant Harriman himself, previous to the time of the acquisition of the Southern Pacific by the Union Pacific, to-wit, in the fall of 1900. (Fols. 2719-20.) The Panama Railroad, the stock of which has been owned by the United States since the purchase of the French canal properties at Panama, operates ships between New York and the Isthmus, and interchanges business with other lines than the Pacific Mail when the same is destined to Central American or Mexican ports, but under the law goods cannot be shipped from New York to San Francisco by way of Panama in other than American bottoms, and there is no other line

of boats running from Panama to San Francisco of American register, except the Pacific Mail. (Testimony of Rossbottom, Secretary of Panama Railroad Co., Fol. 5444.) This purchase of Southern Pacific stock, therefore, gave the absolute control of the Panama Route, both as to rates and service, into the hands of the defendants. As to the manner in which this line has been made entirely ineffectual as a competitor of the rail lines, we will comment later. For the present discussion we merely advert to this as showing the evident intent on the part of the defendants to eliminate competition so far as possible and the power given them by the Southern Pacific purchase to accomplish such purpose.

There has been a unification of management of the Southern Pacific and Union Pacific.

a. The Southern Pacific, Union Pacific, Short Line, and Navigation Co. have had the same President, Mr. Harriman; now Mr. Lovett; the same Traffic Director, Mr. Stubbs; same Assistant Traffic Directors, the same Comptroller, the same General Auditor, the same Director of Maintenance and Operation, Mr. Kruttschnitt, and in general the same Counsel, and the same Director of Purchases, Mr. Thorne. (Mr. Millar's testimony, Folios 9 and 10.)

The majority of the directors of the Union Pacific are likewise directors of the Southern Pacific, and where they are not identical, they are in many cases employees selected by the management. Prior to the acquisition of the Southern Pacific Stock by the Union Pacific Co., there were no common directors in the Southern Pacific and Union Pacific. (See Complainant's Exhibit 1, Folios 12 to 21g, and testimony of Millar, Folios 211 and 222; also Complain-

ant's Exhibits 129 to 131, with accompanying stipulations, Folios 3209-13.)

b. The by-laws of the various companies each have a provision for an Executive Committee with all the powers of the Board of Directors to manage and direct the business and affairs of the company in such manner as the committee may deem best in all cases in which specific directions shall not have been given by the board, and the chairman of the Executive Committee, subject to the control of the committee, is authorized to represent it when not in session. The President of the company has been chairman of the committee of each company. (Millar's testimony, Folio 100; Stipulation, Folio 8340)

c. In addition to having indentical chief officers the local officials are in many cases officers of both companies, as, for instance, Mr. Reeves, General Freight Agent of the Short Line, is also in charge of the traffic on the Union Pacific from Green River to Ogden, and on the Southern Pacific from Ogden to Sparks, Nevada; on the Union Pacific being made subject to Mr. Munroe, the Traffic Manager, and on the Southern Pacific made subject to Mr. Jones Freight Traffic Manager. (Stubbs' testimony, Folios 562-3.)

Mr. Miller, the General Freight Agent of the O. R. & N., is also General Freight Agent of the Southern Pacific lines in Oregon, and with respect to the latter he is immediately subject to Mr. Jones, Freight Traffic Manager of the Southern Pacific. (Stubbs' testimony, Folio 564.)

Mr. McCormick testified, at Folio 624, that he was formerly the Passenger Traffic Manager of the Southern Pacific, leaving that position to become Assistant Traffic Director under Mr. Stubbs. He stated that the supervision

of all the passenger business on all the lines is in Mr. Stubbs and his assistants. The general passenger agents report to Stubbs periodically; that Mr. Lomax, General Passenger Agent of the Union Pacific in charge of local business as far as Green River, on through business as far as Ogden; Mr. Fee, Passenger Traffic Manager of the Southern Pacific, whose jurisdiction extends to El Paso on the south; to Ashland, Oregon, on the north; to Sparks, Nevada, on the east; and on through business to Ogden, both report to Mr. Stubbs; that Mr. Burleigh has charge of the lines from Ogden to Sparks on the Southern Pacific, between Green River and Ogden on the Union Pacific, and of the Short Line, and that Mr. McMurray has charge, of the Southern Pacific lines in Oregon north of Ashland, and of the Oregon Railroad & Navigation Co. lines; Mr. Batters of the lines in Louisiana. (Folios 625-6.)

It is well known that under the laws of Texas the railway lines there must be locally operated. Hence, in form, the operation of the lines in Texas, of which the Southern Pacific is the sole stockholder, is independent, but, of course, the independence of two corporations of both of which the President of the Union Pacific is the President is a myth, and it appears from Mr. McCormick's testimony that by the consent of Mr. Dunlap, Chief Traffic Official of the Texas lines, Mr. Stubbs' office has charge of through business to and from New Orleans. It is very easy to imagine what would happen to Mr. Dunlap if he should refuse to give his consent. (Folios 626-7.)

It is stipulated that Mr. Schwerin is Vice-President and General Manager of the Occidental & Oriental Steamship Co., the Pacific Mail Steamship Co., the San Francisco &

Portland Steamship Co., and the Portland & Asiatic Steamship Co. (Folio 3217.)

As to the operating department, Mr. Kruttschnitt testified that Mr. Bancroft is Vice-President and General Manager of the Oregon Short Line, and General Manager of that part of the Union Pacific from Green River to Ogden, and of the Southern Pacific from Ogden to Sparks, Nevada, a distance of 560 miles, reporting to Mr. Kruttschnitt. (Folio 613.)

Mr. O'Brien is Vice-President and General Manager of the Oregon Railroad & Navigation Co. and the Southern Pacific lines in Oregon as far south as Ashland, about 430 miles. (Folio 614.)

d. The general agencies in most of the large cities have been consolidated. A list of these agents appears in Complainant's Exhibit 74, Folios 567 to 570. These are the railroad representatives who come in immediate contact with the shippers and carry on competition between different railroad systems.

e. In the matter of equipment, the lines have been substantially consolidated, as, for example, the refrigerator cars belong to the Pacific Fruit Express Co., a corporation with twelve millions of capital, of which the Southern Pacific and the Union Pacific each own one-half. (Folios 418-20.)

Mr. Meyer, Car Service Agent of the Southern Pacific and Oregon Short Line at Portland, denominated the Union Pacific, Southern Pacific, O. R. & N., Oregon Short Line, and Sunset lines as the associated lines, and testified that as an official of the Southern Pacific and Oregon Railroad

& Navigation Co. he was instructed to treat all the cars of the Harriman system, that is, the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Co., and Southern Pacific systems as his own cars, as distinguished from the cars of outside lines, and in the handling of equipment he made no distinction by reason of the fact that the equipment might belong to one of the associated lines or another, and that an associated line car is at home no matter what its initials may be, whenever it is on an associated line. (Folios 811-12.) It appears by Complainant's Exhibit 19, Folios 130-31, that the Executive Committee of the Union Pacific approved the action of the chairman of the Executive Committee in causing the organization of the Union Pacific Equipment Association, which the chairman of the committee said was advisable, for the purpose of purchasing equipment to be used by that company and its allied lines, the intention being that the Equipment Association should take title to the rolling stock and then lease it to the various associated companies, or at all events, hold the title thereto until such rolling stock should be distributed among the said companies.

f. It further appears by Complainant's Exhibit 46, Folio 375, that the rules and regulations of the pension system of the Union Pacific were amended on April 10, 1906, so that the term "service" and "in the service" of the Union Pacific, entitling an employee to a pension, should be deemed to refer to employment in connection with any of the railroads owned by the Oregon Short Line, the Oregon Railroad & Navigation Co., the Southern Pacific Co., the Central Pacific Railway Co., Southern Pacific Railroad Co., the Oregon & California Railroad Company, the Galveston, Harrisburg & San Antonio Railway Co., the Texas & New Orleans Railroad Co., Houston & Texas Central

Railroad Co., the Houston East & West Texas Railway Co., Louisiana Western Railroad Co., and Morgan's Louisiana & Texas Railroad & Steamship Co., respectively, as well as upon or in connection with any line of railway now owned or operated by the Union Pacific; and the service of any employee of either of said companies is considered as continuous from the date from which he has been continuously employed by said companies or either of them or by the Union Pacific.

From the foregoing facts it would seem that the Southern Pacific Co. and its subsidiary corporations have been, to all intents and purposes, as thoroughly incorporated into and amalgamated with the Union Pacific as is the Oregon Short Line and the Oregon Railroad & Navigation Co., which are confessedly a part of the Union Pacific system. All of these lines are, as to purchases, operation (including the use of equipment), traffic and the solicitation thereof, welded into one system.

COMPETITION BETWEEN UNION PACIFIC AND SOUTHERN PACIFIC PREVIOUS TO MERGER.

Perhaps the most prominent issue tendered by the pleadings is as to the relations between the Union Pacific and the Southern Pacific. It is averred at pages 6 and 7 of the petition that the rail lines of the Southern Pacific Co. from the Mississippi River to Portland by way of San Francisco and Los Angeles were in active competition with the lines of railroad of the Union Pacific Railroad Co., for the transportation of vast quantities of freight from points in the Mississippi Valley and in eastern states, both to and from the Pacific coast and points in Colorado and other interior states; and that the steamship line of the Southern Pacific Co. from New York, to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the lines of the Union Pacific Railroad Co. for a large amount of traffic originating in the Atlantic coast and central states; and that the rail line of the Southern Pacific from San Francisco to Portland was in active competition with the ships plying between those points, owned by the Oregon Railroad & Navigation Co.; that the ships of the Portland & Asiatic Steamship Co. in connection with the rail lines of the Union Pacific and its subsidiary companies, were in active competition with the ships of the Pacific Mail Steamship Co. and the rails of the Southern Pacific Co. running to the east from San Francisco; that the ships and rail lines of the Oregon Railroad & Navigation Co. were in active competition with the rail lines of the Southern Pacific Co. for a large traffic between San Francisco and points in Montana, Idaho and other states, and that the line of railroad composed of the tracks of the Oregon Short Line Railroad Co. and the Oregon Railroad & Navigation Co. between Ogden, Utah, and Port-

land, Oregon, was in active competition with the lines of the Southern Pacific Co. between said points.

In subdivisions 27 to 31 inclusive of the joint and several answer of the defendant Union Pacific Railroad Co., Oregon Short Line Railroad Co. and the Oregon Railroad & Navigation Co., the allegations of the petition to which we have referred, were denied. The other defendants joined in this denial. The defendants having thus denied that competition existed as to any of the traffic set forth in the petition, the Government was obliged to and did take a large amount of testimony to establish the allegations contained in its petition, and we submit that each of the said allegations has been proved by an overwhelming mass of testimony. Although this testimony overlaps, for the purpose of this discussion, it may be roughly divided into the following subheads:

(a) Competition as to traffic between the Atlantic seaboard and the Pacific coast;

(b) Competition as to traffic between points in the interior of the country and the Pacific Coast;

(c) Competition as to traffic between the Atlantic seaboard and Colorado and Utah common points;

(d) Competition as to traffic between Portland and Utah and Colorado common points, including certain points in Nevada;

(e) Competition as to traffic between San Francisco and Portland;

(f) Competition as to traffic between San Francisco and points in Montana, Idaho, and other states;

(g) Competition as to traffic between various ports in the Orient and points east of the Missouri River in the United States.

We will call attention to the testimony under these various heads separately.

He further stated that the Union Pacific agency was working in competition with him just the same as the Santa Fe. Mr. Hawley was also asked whether the competition between the two systems included passengers. He replied that it did, that it was very active and involved the entire eastern passenger business to the coast. (Folio 1419.)

In the course of the examination of witnesses, counsel for the defendants emphasized the fact that the business secured by the Union Pacific for California points, if it went all rail, necessarily moved from Ogden over the Southern Pacific, but the testimony of Mr. Hawley is corroborated by a vast number of witnesses, both shippers and railroad men, who said that the effort of the Southern Pacific organization was to move all traffic to the coast by New Orleans that could be induced to go that way, while the Union Pacific agencies worked for the route by the Missouri River, which was the only route affording the Union Pacific any revenue. At pages 3397 to 3402 is printed complainant's Exhibit 201, which is a statement prepared by Mr J. C. Stubbs, Traffic Director of the defendants' Union Pacific and Southern Pacific systems, showing the divisions of the through rate accruing to the various lines on business from the Atlantic seaboard to San Francisco. On page 3400 Formula 22 shows the division of the New York rate where the traffic moves all rail by Omaha and Union Pacific. On the basis of a dollar rate the Southern Pacific from Ogden to San Francisco would receive 30.1 cents. Where the traffic moved by the Morgan Steamship line and rail from New Orleans or Galveston, the Southern Pacific Co would receive all the revenue. Therefore it is easy to understand why the Southern Pacific organization should have exerted all its energy to move traffic by its own route rather than to unite with the Union Pacific in a movement which would

give less than one-third the revenue. On the other hand, the Union Pacific organization was necessarily putting forth its best efforts to route the traffic by its line to secure the 34.4 cents out of the dollar rate shown by Formula 22, for the reason that if it moved by the Southern Pacific route, the Union Pacific would get nothing. Mr. Stubbs testified (Folio 3320) that those divisions have been the same since 1870, and he always felt they were more than fair to the Union Pacific, but the Southern Pacific could not get any more. Therefore there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco. Mr. Hawley further testified that at times the Southern Pacific carried eighty-five per cent of the seaboard business, and at one time as high as fifty per cent, or perhaps more, of all the business originating in New York common points territory. (Folios 1419 and 1420.) Defendants' counsel, cross-examining Mr. Hawley, emphasized the reason and motive of the Southern Pacific's endeavor to route this business by New Orleans with the following question and answer:

> "Q. Isn't it true that you endeavored to solicit the business from this territory under your jurisdiction and route it by way of the Sunset Route because the Southern Pacific would get more revenue out of it than it would if it went by way of Ogden?
> A. Naturally." (Folio 1424.)

(The New Orleans route of the Southern Pacific has always been known as the Sunset Route, and it will be so distinguished hereafter in this brief.)

Mr. Hawley's assistant, Throckmorton, now a stock broker in New York, testified:

"Q. I direct your attention first to the time prior to 1901. Did the Union Pacific have a soliciting agency here?

A. It certainly did; yes, sir.

Q. Were you in competition with them?

A. I was.

Q. Active or otherwise?

A. Very active; as active as I could be.

Q. In endeavoring to route traffic by New Orleans?

A. Yes, sir, and I used to get it, too." (Folio 1471.)

He further testified that the Southern Pacific had five solicitors at work in New York City alone soliciting business (Folio 1471), and stated that he worked business to Portland by the Sunset Route, consisting of merchandise, dry goods, machinery, and all general business. (Folio 1472.) He also solicited east bound traffic out of California and Oregon, such as dried fruit, canned goods, canned salmon, apples, etc., and as to this business the Union Pacific and the Northern Pacific were his strongest competitors. (Folio 1473.) On cross-examination Throckmorton testified as follows:

"Q. I understood you to testify that in soliciting freight your first effort was to work it by the Sunset?

A. The Morgan line; yes, sir.

Q. If you could not work it that way, you would then try to work it via the Ogden route?

A. No, sir; I tried to work it by the Sunset, all rail.

Q. To where?

A. To the coast via New Orleans.

Q. From this territory?

A. From this territory; yes, sir.

Q. Rather than by Ogden?

A. Oh, certainly." (Folio 1476.)

The reason for this effort on the part of Mr. Throckmorton as a Southern Pacific representative is also shown by the formulae prepared by Mr. Stubbs (complainant's Exhibit 201). Formula 25 Vol. VII page 3400, shows that on business moving all rail from New York to San Francisco by New Orleans, the Southern Pacific line from New Orleans to El Paso, received 26 cents out of a dollar rate, and the Southern Pacific line from El Paso to San Francisco 36.4 cents additional, making a total of 62.4 cents accruing to the Southern Pacific on business moving by Sunset all rail, as against 30.1 by the Union Pacific route shown in Formula 22, from which we have before quoted. On cross-examination by counsel for defendants, Mr. Throckmorton made more clear the strenuous character of the competition. At Folio 1491 he testified that if he had a telegram saying a car had moved Union Pacific and Southern Pacific, he would wire to know why it moved that way, and would always try to get future business from that consignor by the Sunset Route. This witness, at Folio 1490, emphasized the fact that the Southern Pacific and Union Pacific were both connecting and competing lines

The late Paul Morton, who was when testifying, President of the Equitable Insurance Co., for a time Secretary of the Navy, and who from 1895, to 1904 was Vice-President of the Atchison, Topeka & Santa Fe Railway Company, in charge of its traffic, was probably as thoroughly informed as to transcontinental traffic as any man in the United States. He testified, at Folio 1370, after detailing the situation of the various transcontinental lines, as follows:

> "Q. Taking into consideration the situation of all those railroads you have mentioned, and with which

you are familiar, will you state whether in your opinion in the spring of 1901, prior to the time that the Union Pacific purchased a large amount of stock in the Southern Pacific, the Union Pacific and the Southern Pacific were competitors for transcontinental business?

A. They were both competitors and connections.

Q. They were competitors, were they?

A. Yes."

Previous to 1897 or 1898, when the Atchison bought the San Francisco & San Joaquin Valley Railroad, which runs from Bakersfield to Point Richmond, opposite San Francisco, it had no entrance into San Francisco, but all of its traffic moved from Mojave in Southern California up to San Francisco over the Southern Pacific. Therefore it was in the same position handling business from the Missouri River and east thereof to San Francisco, that the Union Pacific was in delivering business as it did, to the Southern Pacific at Ogden. Mr. Morton testified (Folio 1376):

"Q. When your line ended at Mojave and you went up to San Francisco over the lines of the Southern Pacific, was the Atchison competing for eastern business with the Southern Pacific?

A. I always considered it was.

Q. Was that competition active or passive?

A. It was active."

Mr. Stubbs when called by the defendants confirmed Mr. Morton's statement as to the competition between the Santa Fe and the Southern Pacific on San Francisco business at a time when as he expressed it at Folio 6645, "we interchanged with the Santa Fe at Mojave just as we interchanged with the Union Pacific at Ogden."

Mr. Morton also testified, at Folio 1379, that the Panama Line, made up of the Pacific Mail on the Pacific Ocean, the Panama Railroad, and steamers from Colon to New York, was engaged in competition for transcontinental business and was a factor in the traffic. The competition between the Union Pacific and Southern Pacific embraced passenger business as well as freight, both first-class passenger traffic and emigrant passenger business, prior to 1901, and the rates by all transcontinental lines were the same.

> "Q. Then there was no competition in rates, but the competition was on service and in attracting people's attention to the various lines, was it?
> A. That is right." (Folios 1379-80.)

It appears from the testimony of all of the witnesses and by the tables introduced as exhibits by the witness Frank W. White (pages 882 to 890 inclusive) that with a few minor exceptions, from the pier in New York, the published rates to the Pacific Coast by all lines are, and always have been, the same. Defendants' counsel brought out on cross-examination of Mr. Morton that the Union Pacific could not have made, prior to 1901, an all rail joint rate to California without the concurrence of the Southern Pacific, as it could not reach California points except over that line by way of Ogden. On re-direct examination Mr. Morton testified as follows:

> "Q. Mr. Morton, you spoke of the Atchison and the Southern Pacific having the rate-making power for transcontinental business by reason of being the only lines that reached California. Now it is immaterial, isn't it, when it comes to a question of competition between the Union Pacific or any of these other lines, and the Southern Pacific and the Atchison, what the rate is so long as the rate is the same

over all lines? The full rate does not make any difference in the matter of competition when it is the same over all the lines, does it?

A. No, except that there is no competition in rates, that is all. The competition is in service and in other things." (Folio 1396.)

It further appeared by his testimony that before the Interstate Commerce Law there was a pool on transcontinental business, and that the Northern Pacific and Union Pacific with its line to Portland and the Union Pacific to Ogden, and the Sunset Route were all parties to that pool, and were all scrambling for all they could get out of it, Mr. Morton further testified:

"Q. Now, in the traffic meetings that have been held since the days when the pool went out of existence, where questions of policy were up for consideration or *questions of rates* were not the Union Pacific and the Sunset Route competing with each other oftentimes?

A. Frequently." (Folio 1399.)

As we have said before, the evidence discloses that rates are made in conference, and are uniform over all the lines in the same territory; but in the meetings at which said rates are arrived at, each line is independent and has its vote upon advances and its influence in favor of reductions, so there is large opportunity for the play of competition in rates in the said meetings, as suggested by this answer of Mr. Morton's. Naturally, if the various competitive lines cannot get together in their meetings, rate wars ensue, and the whole rate fabric is disorganized, but in the absence of such wars rates must necessarily be the same over all lines in common territory.

Mr. Chumasero, Traffic Manager of the Royal Baking Powder Co., said in answer to counsel for defendants, that the Union Pacific and Southern Pacific agencies are still actively soliciting his business out of New York; that they are still competing. (Folio 1501.) (New York is one place in which the agencies have not been consolidated.)

Mr. Mesick, General Eastern Freight Agent of the Rock Island, for many years worked in connection with the Union Pacific for transcontinental business, competing with the Sunset Route and the Atchison. (Folios 1503-4.)

Louis M. Allen, General Eastern Freight Agent of the New York Central, in the traffic departments of eastern railroads since 1868, and since 1880 in the Traffic Department of the New York Central, testified that he was familiar with the competition made by Hawley with other lines when he represented the Southern Pacific, and that the Union Pacific was competing for coast business against the Sunset. (Folio 1512.) He remembers that at a time when competition was very strong business was routed to San Francisco by way of the Portland boat line. (Folio 1513.)

George T. Smith, banker, Jersey City, for seventeen years General Agent or Commercial Agent of the Pennsylvania Railroad in New York City, when asked what transcontinental lines were competing for business to California points, replied: "Southern Pacific, Union Pacific, Santa Fe." He further testified that at the time Hawley represented the Southern Pacific he was acquainted with the representatives of the Union Pacific in New York, and then said:

"Q. Were those two lines in competition for business to the coast?

A. Yes, sir.

Q. Did you learn at that time which way Mr. Hawley was routing his business to the coast—by what line, whether by the Sunset or by Ogden?

A. By the Sunset." (Folio 1521.)

He recalled a time when the Northern Pacific routed business to San Francisco by boat as a competitive measure because the Southern Pacific was routing it up by steamer. (Folio 1522.)

Defendants' counsel, on cross-examination, endeavored to break the force of Mr. Smith's statement, with unfortunate results:

"Q. The solicitation of the Union Pacific and Denver & Rio Grande was really against the Atchison route, wasn't it, Mr. Smith?

A. Really against the Atchison?

Q. Yes.

A. It was against the Southern Pacific.

Q. Against the Sunset Route of the Southern Pacific?

A. Yes." (Folio 1530.)

Counsel for defendants and his traffic associate not seeming to understand exactly what was meant by the competition between the Southern Pacific and the Union Pacific, on re-direct examination the matter was cleared up as follows:

"Q. So that Mr. Stubbs will understand thoroughly just what you meant to testify to when I asked you as to their being competing lines, you meant to testify, didn't you, that the agents of the Union Pacific were endeavoring to route traffic over their line and thence to the coast, and the agents of

the Southern Pacific were endeavoring to route it by the Sunset Route?

A. That is exactly what I mean." (Folio 1536.)

Mr. Blye, for many years statistician of the Trunk Line Association, and familiar with traffic movements out of New York, testified:

"Q. And it is a fact that Mr. Hawley and his solicitors were soliciting business by way of New Orleans, the Morgan line steamers for the coast?

A. Yes.

Q. And were the solicitors of the Union Pacific soliciting business over their line in competition with Mr. Hawley and his subordinates?

A. Yes.

* * * * * *

Q. So that the Southern Pacific agents here were endeavoring to send everything they could by New Orleans or Galveston?

A. Yes.

Q. And the Union Pacific everything they could by Kansas City or Omaha, isn't that true?

A. Yes." (Folio 1557.)

George M. Hughes, from 1863 to 1884 with the Erie, and from 1884 to 1894 with the Chicago, Milwaukee & St. Paul Railroad, testified that when Mr. Hawley was Southern Pacific Agent in New York, he, Hughes, worked with the Union Pacific agency for Pacific Coast business in competition with the Southern Pacific agency, and the competition was active. (Folios 1729-30.)

Since 1900 Hughes has routed the traffic for the Singer Sewing Manufacturing Co. At the beginning of his service this business was solicited by the Union Pacific and Southern Pacific in competition. (Folios 1731-32.)

Mr. Swope, General Eastern Agent of the Louisville & Nashville Railroad, and Secretary of the Traffic Club of New York, testified:

> "A. I came to New York in 1898, and between that time and 1901, there was competition to transcontinental points between those two lines—between all the lines.
>
> Q. Was there competition between the Union Pacific and Southern Pacific, the Santa Fe, the Northern Pacific and the Great Northern?
>
> A. Yes." (Folios 1743-44.)

Mr. Swope, at Folio 1748, emphasized the fact that while east of the Missouri River gateways there were many lines of road, there were very few lines west of those gateways.

Mr. E. T. Jeffery, President of the Denver & Rio Grande, was examined generally about competitive conditions with which he had been familiar. Defendants' counsel endeavored to break the force of this testimony, which was as to competition in many quarters, but finally the matter was summed up during the cross-examination as follows:

> "Q. It was whether the competition for this transcontinental traffic east of Ogden (except such as went by the Sunset Route) was not between the Union Pacific and the Denver and Rio Grande and its connections.
>
> A. That is, transcontinental traffic?
>
> Q. Yes.
>
> A. Yes.
>
> Q. Traffic from the Atlantic seaboard and any points west of the Atlantic seaboard was always competed for by the Southern Pacific Sunset Route in connection with the Morgan Line, wasn't it?
>
> A. Yes." (Folios 1845-6.)

In answer to a rather involved question of defendants' counsel, which embodied the suggestion that all traffic moving by Ogden had to reach the coast over the Southern Pacific, Mr. Jeffrey said:

> "A. All that the Denver & Rio Grande brought to Ogden was grist for the Southern Pacific mill, because it was the only route that there was to send business west from Ogden by. Now the reason why I am in doubt about answering your other question, which you have taken so much pains to elaborate, and which I apologize for troubling you with, is that there were periods, as I remember it, some years ago, when Southern Pacific rates ran back into Nevada, certainly into certain points in the interior of California, which affected competitive traffic to those points and in that territory so that it made a competition at some of those points through the Ogden gateway for the Denver & Rio Grande or Union Pacific and their eastern connection and through the San Francisco gateway to those points and connections via sometimes vessels around Cape Horn, an all water route, sometimes via the Panama Route, sometimes perhaps via New Orleans and the all rail route, thence to San Francisco, although I imagine that the Southern Pacific protected that long haul carefully." (Folio 1843.)

And again, at Folio 1848, Mr. Jeffrey said:

> "A. In the first three or four years of my presidency of the Denver & Rio Grande, which commenced seventeen years and four months ago, I was told by the Denver & Rio Grande traffic officers, and especially by its Traffic Manager, that there were certain lines of business at local points in Western Nevada and in the interior of California, which points were reached by the Southern Pacific, to which points business was done from San Francisco by San Francisco jobbers, and perhaps by job-

bers from the Atlantic seaboard through San Francisco in competition with traffic that would go via Southern Pacific, the Union Pacific, and Denver & Rio Grande, and the eastern connections of the two last named. * * * Certain classes of business would be shipped to certain interior points in California from San Francisco, which same points could buy directly from the east and the business be sent on the long all rail haul."

Mr. J. C. Stubbs, Traffic Director of the Union Pacific-Southern Pacific System, and who has been connected with the Southern Pacific since 1870, and for a long time prior to the amalgamation as Vice-President in charge of traffic, after testifying that the rates from Atlantic seaboard territory applied to the coast by the Morgan Line, was asked concerning Portland:

"Q. Well, business moved from the eastern points via that line, didn't it?

A. I think some did; that line was worked for Portland." (Folio 530.)

And again, speaking of the competition from Atlantic seaboard points to California points, he testified that prior to 1901 and for many years the Southern Pacific and the Morgan Line was an important factor in that competition. (Folio 538.)

He further said, with reference to the movement out of Atlantic seaboard territory (Folio 556):

"A. What I said was this: that with respect to Atlantic seaboard business, that the conditions today in the matter of two representatives were the same as before 1901 that you speak of; that the Union Pacific had its general agents there soliciting or working in aid of its connections and watching its connections, and the Southern Pacific still

had its agents, its general agents, there, but the Southern Pacific is the initial line there, while the Union Pacific is not; but even the Union Pacific, all the endeavor of the Union Pacific general agencies in this Atlantic seaboard system must contribute to the Southern Pacific because they cannot get into California otherwise, and really you may say that the agency was practically joint."

This answer of Mr. Stubbs really sums up the defense in this case. Defendants cannot deny that for years the Southern Pacific actively solicited and worked for business out of New York common points to the coast by way of the Morgan Line and the Sunset Route; that the Union Pacific agencies also actively worked to secure the same business, but although this competition for that business was most active, still Mr. Stubbs' answer implies that there was really no competition because for a portion of the way the traffic secured by the Union Pacific, thus taken away from the Southern Pacific, was hauled by another line of the Southern Pacific; that although the Southern Pacific agency was working against the Union Pacific endeavoring to take everything by the Morgan line while the Union Pacific was working to take everything it could away from the Morgan line, nevertheless, because of the haul from Ogden to San Francisco, its efforts did not amount to competition. It is an interesting fact that Mr. Stubbs upon another occasion demolished this theory.

From 1887 to 1898 the Canadian Pacific participated in San Francisco business from the Atlantic seaboard by rail to Vancouver, and thence by the Pacific Coast Steamship Co. It was able to secure business by this route by transporting traffic at a differential, at certain times by agreement with the American lines and at other times fixed by itself without consent of the other lines. This differential or

difference in rates led to general demoralization of transcontinental rates, and efforts were made to induce the Canadian line to abandon it. It finally consented to an arbitration, which was had in Chicago. The American lines were represented by a committee, of which Mr. Stubbs was chairman and Mr. Morton a member. The case was presented for the respective sides by Mr. Stubbs for the Americans, and Mr. Kerr and Sir Thomas Shaughnessy for the Canadians. At page 1990, Folios 3241 et seq., Mr. Stubbs was examined with reference to this matter and to the statements that he had made upon that hearing, and although these statements were very unpalatable to him, in view of his present relations to the case in suit, he very honorably stated that all the statements of facts contained in his presentation of the American case were accurate to the best of his belief, and that he had not consciously misstated anything. He repeated this a number of times, notably at Folio 3324. After examining Mr. Stubbs at length, it was agreed by both parties that the entire record of this arbitration might be put in evidence, including Mr. Stubbs' remarks and Mr. Kerr's. Mr. Stubbs detailed a number of mixed water and rail lines that were open for business between the Missouri River gateways and San Francisco (St. Paul being on a parity with Missouri River points). These routes included the Great Northern and Northern Pacific Railways to Puget Sound points, and thence to San Francisco by boat. from Omaha three routes, one by the Union Pacific via Granger, the Oregon Short Line, Oregon Railroad & Navigation rail line to Portland and its boat line to San Francisco; second, the Burlington through Denver, thence by the Rio Grande and Oregon Short Line and Oregon Railroad & Navigation Co. to Portland, thence by O. R. & N. boats to San Francisco, and, third, the Rock Island through Colo-

rado Springs and Denver, thence via the Midland, or the Rio Grande, the Short Line, the Railroad & Navigation Co., and the steamships of the latter to San Francisco; also three similar lines from Kansas City. (Folios 3259-60.)

He then proceeded in his argument, which is quoted at Folios 3265 and 3266:

> "Does the existence of the Central Pacific road and its operation as a part of a through all rail line (in which some of the integral parts of the through lines via Portland, which are part water and part rail, are interested) alter the rights, the equitable rights, of the Portland mixed lines as against the Canadian line or against any other competitor? We contend that it does not—that as a matter of right, equitable rights, as well as a matter of law under Justice Brewer's decision in the case of the Chicago North-Western, plaintiff in error, against John Osborn, and the same plaintiff in error against A. J. Junod, a through line is a line, is a unit, regardless of whether part of it may be used in forming another through line even if it be a rival through line. The reasonableness of this proposition is manifest. Any other view would deprive certain individual carriers not only from participation in, but *also of an opportunity to compete for a given traffic.*
>
> * * * * * *
>
> "To illustrate: If the Oregon Short Line, running from Huntington to Granger and to Salt Lake, were deprived of a connection for the purpose of making a through line to San Francisco via Portland with the Union Pacific at Granger, or with the Rio Grande Western at Salt Lake City because those respectively had physical connection with the Central Pacific at Ogden, the Oregon Short Line would be deprived of all opportunity to compete for a share of the San Francisco traffic."

Mr. Stubbs thus thoroughly answered the entire technical argument that is advanced to show that a railroad company cannot compete for business, when as a matter of fact it is competing for business.

Mr. Munroe, Freight Traffic Manager of the Union Pacific, who has been with that company for many years, and whose sympathies are naturally with the defendants, testified (Folio 656) as follows:

> "Q. Did you not find prior to 1901 that the Southern Pacific was competitive with the Union Pacific, the Short Line and the Oregon Railroad & Navigation Co. into Portland?
> A. Just the same as it is now.
> Q. Is it competitive now?
> A. It is.
> Q. Then there is competition?
> A. There is."

And again, at Folio 658:

> "Q. You say that through your commercial agents you keep tab of your competitors as far as you can?
> A. Yes, sir.
> Q. What roads do you mean by your competitors?
> A. I mean—well, of course, it depends on the business.
> Q. We are talking about transcontinental business.
> A. Speaking now of the San Francisco business, for the purpose of illustration, all lines east of Ogden other than the Union Pacific, all lines east of El Paso, *including the through route of the Sunset Line from New York to San Francisco*, and incidentally, of course, all the lines operating via the northern gateways."

Mr. Bogert, now the agent of the San Pedro road in Pittsburg, was General Eastern Agent of the Chicago & Alton twenty-one years, and was with the Pennsylvania Road for twenty-three years in New York City. The Alton, of course, operates in connection with the roads beginning at the Missouri River gateways. He testified that Mr Hawley endeavored to route his traffic by way of New Orleans, either boat and rail or all rail, and that Mr. Tenbroeck, for over twenty years General Eastern Agent of the Union Pacific, was trying to work everything by Omaha and the lines north, and that Hawley and Tenbroeck were in competition with each other for coast business for many years previous to 1901. (Folio 2078.)

Mr. Fowler, now Freight Agent of the Merchants' & Miners' Transportation Co. in Pittsburgh, from 1888 to 1891 Agent of the Union Pacific at Philadelphia, testified that at that time competition for coast business out of Philadelphia between the Union Pacific and the Southern Pacific was "very strong." (Folios 2105-6.)

Mr. Hahn a wholesale grocer in Portland, Ore., testified that they were bringing goods from the east prior to 1901, and that business was solicited by the Union Pacific and Southern Pacific systems separately. (Folio 667.)

Mr. E. Newbegin, of Portland, a very large dealer in agricultural implements, which he imports from New Jersey, Pennsylvania, and different eastern states, as well as from states further west, testified that his business was, prior to 1901, solicited by the Southern Pacific and the Union Pacific solicitors separately, and that most of it was routed by the Rio Grande, to Ogden and thence by South-

ern Pacific via Sacramento, to Portland. (Folios 670 to 672.)

The testimony which will be hereafter commented on shows that this Sacramento route has been closed to traffic since the joint management, and no traffic from the east is permitted to move by way of Ogden and Sacramento, but it is all brought over the Oregon Short Line.

Mr. Honeyman, a wholesale hardware dealer at Portland, testified that their business was solicited by the two lines separately, and they shipped goods from the Atlantic seaboard by Sacramento. (Folio 684.) He also shipped by the Sunset Route. (Folio 688.) This competition went to the extent of cutting rates. (Folio 691.)

Mr. Gill, wholesale and retail stationery and book dealer, having the largest store of the kind in Portland, was solicited by both routes, and sometimes shipped by the Sunset from New England and New York common points. (Folios 696-697.) These shipments were the result of solicitation by agents and rates. (Folios 698-9.)

Mr. Ehrman, of Portland, a wholesale grocer, was formerly solicited by the different lines, and to some extent shipped from the Atlantic seaboard by the Sunset Route, as well as over the northern lines. (Folios 707 to 709.)

Mr. McCusker, for many years a representative of the Southern Pacific at Portland, worked with the Missouri Pacific, Rock Island, Burlington, and Rio Grande, also for the Sunset Route as against the Union Pacific and the O. R. & N. for all classes of merchandise and from all points, east, including the Atlantic seaboard. (Folio

712.) He also worked the east bound traffic in hops, which is a very large traffic, amounting to from 75,000 to 100,000 bales per year, each bale weighing 180 to 200 pounds. He moved hop shipments to the east, to the Atlantic seaboard and Europe by the Sunset. The Oregon Railroad & Navigation Co., Short Line, and Union Pacific was the strongest competitor for that business. (Folios 712 to 714.)

The Oregon Railroad & Navigation Co. had boats on the Willamette River to this hop district to bring in the hops from points tributary to the rail line of the Southern Pacific, and sent them east over its rail lines. (Folios 715-716.) He also routed hops east by Sacramento and Ogden, thence over the Rio Grande and other lines. (Folio 717.) Also competed strongly for Willamette Valley wool to Boston by the Sunset against the all rail line. (Folio 725.) There was formerly competition in rates between the Southern Pacific and O. R. & N. and its eastern connections, by the use of a differential on San Francisco. (Folios 726-7.) All the lines were cutting rates against each other at times. (Folio 728.) Also competition in hides to the east. (Folio 732.)

Mr. McCusker recalled, testified that at the time of the war between the Union Pacific and Short Line, when the Union Pacific was operating in connection with the Shasta Route, that line made such fast time that they brought freight from Chicago to Portland in seven and a half days. (Folio 4490.)

He further testified that the traffic moving out of Portland via Sunset Route to the Atlantic seaboard, consisted largely of hops, prunes, canned goods and hides; and westbound all classes of merchandise. (Folios 4496-7.) To get

this business the Southern Pacific ran open warehouses for the benefit of the hopmen. (Folio 4498.)

Louis Lochman, of Salem, Oregon, shipped hops to New York and to London; there was active competition between the Southern Pacific and the O. R. N. (Folios 737 et seq.) O. R. & N. boats were then on the Willamette River to bring in hops. (Folio 738.)

Otto Breyman, manufacturer of saddlery goods at Portland, formerly shipped by the Southern Pacific, Sunset, and Union Pacific, and Oregon Short Line. (Folio 761.)

Mr. McBride, General Agent, Denver & Rio Grande, Portland, states that in the year 1900, the year before the amalgamation, 320 carloads of hops were shipped from the Willamette Valley and went east over the Denver & Rio Grande, of which 280 cars went by Sacramento and Ogden, and about 40 cars came from Portland over the O. R. & N. and the Oregon Short Line. (Folio 827.) A large amount of hops moved to the Atlantic seaboard over the Sunset Route. (Folio 831.)

Mr. R. B. Miller, who is now the representative of both railroads at Portland, being General Freight Agent of the O. R. & N., and General Freight Agent of the Southern Pacific lines in Oregon, testified on cross-examination that in years gone by hops moved to the Atlantic seaboard both via the Sunset Route and by the Union Pacific, but largely by the Sunset Route. (Folio 861.)

Mr. O'Reilly, in the towing and lighterage business at Portland, and who was employed by the Union Pacific Rail-

road Co. and the O. R. & N. at Omaha, Denver and Portland, severing his connection with the latter company in 1897 (Folios 4331 to 4333), testified that the business from Atlantic seaboard territory reached Portland via Union Pacific, Great Northern, Northern Pacific and Southen Pacific, including the Sunset Route; that each of these lines had separate agencies, and the Atlantic seaboard traffic was the subject of solicitation by such agencies, and that competition was active and covered all classes of traffic, including dry goods, iron and commodities of that character. (Folio 4340.)

He also testified that there was an important tonnage east bound to the Atlantic seaboard from Portland and vicinity, consisting of wool, hides, hops, canned goods and canned salmon, which was the subject of this same competition. (Folios 4342-3.)

During the receivership of the Union Pacific and separate management of the Short Line, for a time the Union Pacific worked Portland business from the east in connection with the Southern Pacific Shasta Route, as against the Denver & Rio Grande and the Oregon Short Line. Special efforts were made in the matter of service during the time that condition continued. (Folios 4344 and 4345.)

This same competition of the Union Pacific and the Shasta Route as against the Denver & Rio Grande and the Short Line was testified to at Chicago by Mr. Gallagher, agent in that city of the Soo Line and Canadian Pacific, and who was formerly employed by the Union Pacific in Omaha and Kansas City. At that time a train was put on by the Union Pacific called the "Portland Special," for the purpose of trying to whip the Short Line into giving better divisions. (Folios 3122 to 3124.)

Mr. McCarthy, Traffic Manager of the Salt Lake Hardware Co. and for a long time the contracting freight agent of the Union Pacific at Salt Lake, also testified to this competition, which resulted in the putting on of this Portland train moving over the Union Pacific and the Shasta Route, and that it made the run from Omaha to Ogden in about thirty-two hours, which is extraordinarily fast time for a freight train. During the time that train was on, they endeavored, if they desired quick deliveries into Salt Lake, to get the traffic on the Portland train as far as Ogden. (Folios 3911 and 3912.)

Mr. Burdick, in the prune canning business at Portland, who shipped his product to all parts of the country, testified to the competition between the Sunset Route, the O. R. & N., the Oregon Short Line, the Union Pacific, the Northern Pacific and the Great Northern, in the days when the companies had separate agencies. (Folios 4384 and 4385.)

Mr. Adams, General Freight and Passenger Agent of the Spokane, Portland & Seattle Railroad, commonly known as the North Bank Route, which is owned jointly by the Northern Pacific and Great Northern, was, previous to the amalgamation of the Southern Pacific and Union Pacific, traveling freight agent of the O. R. & N. out of Portland. He testified to the competition in the movement of hops to the east, the O. R. & N. maintaining a boat line to the head of navigation on the Willamette River, bringing the commodity into Portland, and thence sending them to the east over the Union Pacific system in competition with the Southern Pacific, which reached the same points with its rail lines and moved the business to the Atlantic seaboard via

the Sunset. This business was competed for by the two lines. (Folios 4414-16.) This hop business was also solicited and some of it moved, by the Northern Pacific out of Portland. (Folio 4424.)

Captain Graham, for thirty years operating river steamers on the Willamette River, testified that at the time the O. R. & N. and the Southern Pacific were separate in management, there was competition from the Willamette Valley between the O. R. & N. boat lines and the Southern Pacific Ry. on hops and prunes, each company having separate soliciting agencies in the Willamette Valley. (Folios 4434-35.) He further stated that the crop of hops in the valley runs from 80,000 to 110,000 bales per annum, averaging about 75 bales to the carload, which would be between 1,400 and 1,500 carloads. They are moved to New York, New England, London, and some to St. Louis and Milwaukee. (Folio 4436.)

Mr. Sweek, now in the real estate business in Portland, was in the traffic department of the O. R. & N. for two or three years, beginning with 1899; he testified that the hop business in the Willamette Valley was actively competed for between the Southern Pacific and the Union Pacific. The competition was very active. The Southern Pacific solicitation was for the Sunset Route, and he assumed that was the way traffic secured by that line was moved. (Folios 4454-4455); that the revenue on shipments to the seaboard ran from 200 to 400 dollars a car, depending on the size of the car. (Folio 4456.)

Where hops were more nearly tributary to the Southern Pacific the O. R. & N. would pay the expense of hauling them to its boat line on the river. (Folios 4455-4474.)

Mr. Elmore, of Astoria, Oregon, the largest shipper of Columbia River salmon, his annual shipments amounting to about twelve million pounds, testified that previous to the consolidation of the management of the O. R. & N. and the Southern Pacific lines, his traffic was solicited by all the transcontinental lines, namely the Northern Pacific, Great Northern, Southern Pacific and Union Pacific, and it moved over all routes, including the Sunset Route, although not much went that way; some of it went by the Southern Pacific to Ogden, and thence by the Rio Grande. (Folios 4600-4603.)

Mr. Kollock, who has been for sixteen years the solicitor for the Pennsylvania Railroad at Portland, testified that previous to the union of the Southern Pacific and Union Pacific systems, he met the agents of those respective systems in the Willamette Valley competing with each other. He solicited hops, lumber, prunes and also passengers. (Folios 4605-6.)

Mr. Crichton, Secretary and Treasurer of the Columbia River & Puget Sound Transportation Co. operating boats on the Columbia River from 1894 to 1901, had a contract with the Southern Pacific to carry salmon from points on the Columbia River to Portland, delivering the traffic there to the Southern Pacific. The O. R. & N. was at that time bringing in salmon to Portland from the same points by its boat line, in competition with Mr. Crichton's line. The salmon delivered to the Southern Pacific was destined to the seaboard, Boston, New York, Philadelphia, also to some interior points. The Railroad Company absorbed the steamship charge into Portland of $1.25 a ton. His company also delivered salmon to the Northern Pacific at Kalama, where that line crosses the Columbia River. (Folios 4610-11.)

This contract was cancelled by the Southern Pacific August 13, 1901. (Folio 4613.) Previous to its cancellation they had also carried tin plate to the canneries, brought from the east by the Southern Pacific and delivered to the steamship line at Portland, and in addition some merchandise such as shoes. (Folio 4614.) The Southern Pacific had a solicitor endeavoring to get the business. The boat line also solicited traffic at these points on the river, and the O. R. & N. had solicitors there at the same time. (Folio 4615.)

Mr. McGuire, of the Pacific Paper Co., a wholesale paper house at Portland, testified that previous to the consolidation, their business was actively solicited by the Southern Pacific as against the O. R. & N., Oregon Short Line and Union Pacific representatives. They shipped paper from Massachusetts by the Sunset and also by the Union Pacific and Short Line. (Folios 4620-21.)

Mr. Hurlburt, now in the business of developing a power plant, for many years in the railroad service at different points in the east, testified to the movement of passenger business over various lines to the coast. (Folios 4524, et seq.) In 1890 he came to San Francisco as Assistant General Passenger Agent of the Union Pacific. The Southern Pacific was working passenger business by its Sunset Route at that time; he was working business over the Union Pacific. (4526.) He testified to the methods employed by passenger departments to secure traffic, such as personal solicitation, and advertising in magazines and newspapers. Those were the methods pursued by the Union Pacific and Southern Pacific when he was in San Francisco, and by lines in all places where he has been. (Folios 4530-31.)

At that time the Southern Pacific did not have the Sunset Limited train, which it afterwards put on, and thereby increased its business. If the Southern Pacific controlled the business, it sent it by New Orleans. (Folios 4537-39.) He further testified that round trip tickets were always sold, good over one line and back over another. **All the roads united in issuing these tickets,** and the various passenger agents put forth their efforts to secure that kind of traffic one way for their lines. (Folios 4539-40.)

Mr. Lang, now in other business, was employed by the Union Pacific from 1888 to 1906, and was in the passenger office of the company at Portland from 1895 to 1900. His business was booking passenger business of all classes, including transcontinental passenger business at Portland, for the Union Pacific. The same business was being solicited by the Southern Pacific for its Sunset Limited train. (Folios 5054-57.) It was also part of his business and that of the other passenger agencies in Portland to secure travel one way at least, by round trip excursionists. These agencies also competed for European immigration business. There was a great deal of that business coming into the United States through the different ports from Halifax down to the Gulf points. (Folios 5057-58.)

On cross-examination he testified to the methods of securing passenger business, namely, advertising the routes by newspaper advertising, folders, posters calling attention to the time, service, through car service, and scenery. (Folio 5059.)

Mr. Koshland, a large wool merchant engaged in the business for thirty-eight years, and shipping wool to Boston from the various parts of the country, testified that thirteen

or fourteen years ago wool moved out of the Willamette Valley to the east partly over the Shasta Route, partly over the Southern Pacific route by Galveston, and also by the **Northern Pacific, the Short Line** and the Union Pacific. (Folio 5113.)

Mr. Wilde, in the cold storage business at Portland, formerly chief clerk in the Union Pacific Railroad offices in San Francisco, previous to the amalgamation of the companies, testified that the Union Pacific agency endeavored to move Atlantic seaboard business to San Francisco via the Union Pacific, and the Southern Pacific endeavored to move it by the Sunset Route. (Folio 4562.)

It appeared by the testimony of Mr. Baumgartner, for eleven years agent of the California and Oregon Coast Steamship Company, that boats of that Company stopped at Coos Bay and Humboldt Bay, commonly called Eureka, and took traffic out of those points, consisting principally of redwood lumber and shingles. East bound traffic was handled by way of Portland in connection with the O. R. & N. from Eureka, the O. R. & N. traveling freight agents going there and soliciting it. Mr. Baumgartner's company also had a local agent there, soliciting it. This same traffic was solicited at Eureka by the Southern Pacific agents, who were endeavoring to route the lumber for the east by way of San Francisco. This lumber moved both ways. (Folios 4509-10.) The rates were equal. On cross-examination, (Folio 4514), he said that the tariffs in effect were by Portland via his company and the O. R. & N., and by San Francisco via the Pacific Coast Steamship Co. and the Southern Pacific. Mr. Baumgartner further testified that lumber moved from Coos Bay,—white cedar lumber used

in the east for finishing purposes, being a product peculiar to that region. This is shipped to the Atlantic seaboard, and also to Chicago, and it moves by boat both to Portland and to San Francisco, and thence east. (Folios 4510-11.)

At Folio 4515 he said the O. R. & N. Co. had a tariff in specifying the rate from Coos Bay, and absorbed 10c a hundred the charge of the Steamship Co., and that arrangement had been in effect there for years.

Mr. Gallagher testified, at Folio 3125, that a lumber tariff was in from Coos Bay by San Francisco, thence over the Southern Pacific, and that the boat line got 10c a hundred of that through rate.

Colonel Holabird of Los Angeles, an expert in the employ of the late defendant Harriman, examined into the traffic possibilities of the Coos Bay region, and his report will be found in the record as Complainant's Exhibit 162, Folios 4721 et seq. At Folio 4725, this report states that the mill men, Chamber of Commerce and bankers claimed that the merchantable timber tributary to Coos Bay amounts to sixty billion feet, but that in his opinion, considering the losses by fire, and the timber that can never be gotten out, he would estimate the merchantable standing timber at fifteen billion feet. At Folio 4726 he states that the mill of the C. A. Smith Co. on Coos Bay, is of the most modern construction; he has visited many saw mills, and never saw one equal to it.

Mr. Grimes testified that this mill would cut 300,000 feet in ten hours, and that there are several other mills besides. (Folio 4740.)

Mr. Kelly testified that he was in charge of the transfer of freight from the steamers and river boats on the docks at Portland for the O. R. & N. from 1894 to 1901. He said that lumber and shingles were received from Coos Bay or Eureka, and moved east, and merchandise was taken to Coos Bay from Portland; that the river boats brought in from the Willamette Valley a great deal of traffic such as potatoes, onions, paper and prunes. Prunes and hops moved east all rail over the O. R. & N. Some of that traffic moved to the east by the Southern Pacific, and some by the Northern Pacific, and some by the O. R. & N. to Spokane, and thence east over the Great Northern. It will be remembered that other boat lines were on the river aside from the O. R. & N. boats. (Folios 4568-9.)

On cross-examination, at Folio 4571, it appeared that the Cowlitz River boats landed at the same docks; they were not controlled by the O. R. & N. Boats were also landed there from Vaucouver and other places. It will be remembered that Mr. McCusker testified that he secured the shipment of shingles that came in by the Cowlitz River boats in competition with the O. R. & N.

Mr. Connor, now in private business, but for many years in the railroad and steamship business in San Francisco, including service with the Chicago, Milwaukee & St Paul, with the O. R. & N., the Panama Railroad Co. and the Pacific Coast Steamship Co., gave very significant testimony with reference to the attitude of the Southern Pacific upon transcontinental business at Folio 4814:

"Q. Previous to 1901 how did the Southern Pacific Railroad Co. endeavor to route its transconti-

nental business after the establishment of the Morgan line, its Gulf Route, Sunset Route, so called? By transcontinental business I mean first the seaboard business from the Atlantic seaboard territory.

A. My connection with the transcontinental business while with the Milwaukee Road was that of a solicitor for the freight over our lines only, and in connection with what other lines I could work the traffic, and it is my recollection that the Southern Pacific solicitors were never at any time to be depended upon to help get this traffic, whereas the other connecting lines with which the Milwaukee had rates and divisions could be depended upon."

And again, at Folio 4816, after testifying to the good service given by the Sunset Route on business from the Atlantic seaboard, he said that the Southern Pacific maintained a soliciting agency, and the Union Pacific also had an agency in San Francisco. He then testified:

"Q. What were the relations between your agency and the Union Pacific agency in securing the routing of transcontinental business?

A. We co-operated very closely.

Q. And I believe that you stated that you did not run across any co-operation on the part of the Southern Pacific?

A. No, sir."

Mr. Connor also said that in 1894, when he was the general agent of the O. R. & N. at San Francisco, he negotiated an arrangement with the Panama Railroad for divisions on business from the Atlantic seaboard to Portland, and that large traffic moved that way and the business grew. This was before the Southern Pacific purchased control of the Pacific Mail Steamship Co. (Folio 4828.)

Mr. Toll, for many years up to 1905 connected with the Southern Pacific at San Francisco, finally becoming Chief Clerk in the general freight office, testified that previous to the time the Union Pacific purchased the control of the Southern Pacific, the latter endeavored to route its business from Atlantic seaboard territory by the Sunset Gulf Route. (Folio 4848.)

On cross-examination, after repeating his statement that the Atlantic seaboard business was worked by the Southern Pacific by the Sunset Route, he testified that on anv business moving through the Ogden gateway, the Southern Pacific was neutral as between the Denver & Rio Grande and the Union Pacific. (Folios 4857-8.) On re-direct examination, he said the Union Pacific actively solicited Atlantic seaboard business in San Francisco in competition with the Southern Pacific (Folios 4859-60.) Mr. Toll further testified that the routing of business brought from the east by San Francisco merchants was at that time largely controlled at San Francisco. (Folio 4861.)

Mr. Graham, now in private business, was a railroad solicitor for the Rio Grande from 1898 to 1902, previous to that for about eleven years with the Southern Pacific, and as such solicitor for the Southern Pacific, he solicited business for the Sunset Route, all classes of freight traffic originating in New York, and also east bound from California points to New York territory. The Union Pacific soliciting agency was actively soliciting the same classes of traffic by their line. (Folios 4866-68.)

Mr. Adams, now traffic manager of the Pioneer Fruit Co. was commercial agent of the Rock Island-Frisco system at San Francisco from 1891 up to a year ago. He

gave the names of certain of the agents and solicitors of the Southern Pacific and Union Pacific respectively previous to 1901, and said that the effort of the Southern Pacific was to move business from the Atlantic seaboard by the Sunset Gulf Route. The Union Pacific was also actively soliciting that business.

He corroborated Mr. Toll's statement that the majority of the shipments from the Atlantic seaboard were routed on the coast by the purchasers. (Folios 4870 to 4874.) The Southern Pacific was competing with the Union Pacific and with the Rock Island agency for this business. (Folio 4876.)

Mr. Loose, who for twenty years has been a shipper of dried fruits from San Jose, his shipments at times reaching as high at 400 cars a year, testified that the Southern Pacific endeavored to move his traffic to Atlantic coast points by the Sunset Gulf Route, and the Union Pacific by its route, each system being represented by separate soliciting agencies. (Folio 4891.)

Mr. Clifford, who was a long time in the service of the Union Pacific in important positions, commencing with employment in the general freight offices at Omaha, then acting as general agent at Butte, afterwards at Cincinnati, and finally from 1901 for five years at San Francisco, testified that when he arrived at San Francisco he found that the general agent of the Union Pacific also acted as claim agent, and being asked why that claims bureau was established, said:

> "A. That was established originally to put the Union Pacific on the same basis for expeditiously handling all claims as was the Southern Pacific; that was the reason for it.

Q. What effect did the establishment of that claims bureau at San Francisco have upon the securing of business by the Union Pacific?

A. The Union Pacific made themselves stronger by reason of their ability to settle promptly a man's claims, pay him his money promptly.

Q. At that time which way was the Southern Pacific routing its business, so far as they could control it?

A. The Southern Pacific were routing via New Orleans." (Folio 4904.)

This testimony is highly significant as showing that the Union Pacific system recognized that its strongest competitor in securing business was the Southern Pacific. It is a well known fact that in soliciting business one of the important considerations that affect shippers is their ability to secure prompt adjustment of claims for overcharges and damage, and Mr. Clifford by this testimony shows that the Union Pacific, in order to meet the competition of the Southern Pacific, did the very unusual thing of establishing a claims bureau nearly two thousand miles away from its general office. On cross-examination he stated that none of the other lines adjusted claims through their general agent, to his knowledge. (Folio 4907.)

Mr. Havens, Vice-President of Murphy, Grant & Co., wholesale dry goods, testified that the principal part of their freight from New York, since shortly after the Sunset Route was established, has moved to the coast by that route. (Folio 4917.)

Mr. Scott, President of the Pacific Hardware & Steel Co., one of the largest concerns on the Pacific coast, testified:

"Q. Previous to the time that the Southern Pacific and Union Pacific came under one domination,

what was the attitude of the Southern Pacific people in the solicitation of freight, if you knew anything about it at that time?

A. Yes, I am somewhat familiar with it; the position of the Southern Pacific?

Q. Yes, sir.

A. They were very anxious to get their business via that route, via New Orleans, and the Union Pacific was very anxious to get it by the other route." (Folio 4924.)

Mr. Watkins, Vice President of W. W. Montague & Co., wholesale stoves, ranges, tinware, plumbing goods, mantels, grates and tiling, has been connected with that company for forty-five years. When asked over what transcontinental line their freight moved, he answered:

"A. The Southern Pacific, the Union Pacific and the Santa Fe."

The seaboard business, when it came Southern Pacific, moved by the Sunset Route. (Folio 4948.)

Mr. Shepard, General Manager and Secretary of the Pacific Improvement Co., who up to September, 1901, was general freight agent of the Southern Pacific at San Francisco, testified that he was with the company at the time the Sunset Gulf Route was established in 1883, and further said:

"Q. From the time of the establishment of that route what was the policy of the Southern Pacific in moving traffic from the Atlantic seaboard to San Francisco, by what route did they endeavor to move it?

A. They moved it from New York to New Orleans by water, and from New Orleans to San Francisco by rail. * * *

Q. What was the condition in your day as to competition between the rail lines and the Sunset Line for that business?

A. It was very active.

Q. Did the Union Pacific maintain an agency here soliciting business for that route?

A. Which route?

Q. By the Union Pacific?

A. Yes, sir." (Folio 4993.)

He further testified that the service of the Sunset Route varied with conditions; sometimes it was five days quicker than the all rail routes, sometimes no better. (Folio 4993.)

From interior points east of Pittsburg and Buffalo, from which traffic had to be taken to New York for shipment by the Sunset Route, the time was no better than all rail, but that traffic moved in large volumes both ways, namely, all rail, and by the Sunset Route from that interior country. It also moved from Boston and vicinity. When the Sunset Route was first opened in 1883, what was known as the Sunset fast freight or Sunset fast freight train, was put in service. (Folio 4995.) He further testified at Folio 5002:

"Q. Now the Southern Pacific had its line clear through from New York, the Union Pacific had its connections east from the Missouri river, and the Atchison its connections east from Chicago, that is correct, isn't it?

A. Yes, sir.

Q. Were those three routes competing with each other for transcontinental business always from the time the Santa Fe was built?

A. They were all carrying traffic, yes sir.

Q. And all trying to get all they could weren't they?

A. All trying to secure the traffic, and had their agents out on the street, I believe."

Mr. Rulofson, representing large eastern manufactories, President of the Architectural Sheet Metal Company in San Francisco, and who was from 1870 to 1904, connected with Baker & Hamilton, a large wholesale hardware house in San Francisco, wholesaling all over the Pacific coast states, territories and Hawaii, receiving their stock from all the large manufacturing centers in New England, the Atlantic seaboard and elsewhere, testified that he remembered that the Southern Pacific and Union Pacific each solicited their business from the east, the Southern Pacific agency routing via the Sunset, and the Union Pacific by the Missouri River gateways. (Folios 5023-24.)

Mr. Prentice, President of Phoenix Desk & Chair Co. at San Francisco, and from 1878 to 1906 connected with the Southern Pacific Ry., for fifteen years soliciting freight, testified that prior to 1901, the Southern Pacific agency in San Francisco endeavored to work freight from the Atlantic seaboard east of Buffalo, by the Sunset Gulf Route. (Folio 5033.)

Mr. Sanborn, who has been for twenty-four years the general agent of the Chicago, Burlington & Quincy Railroad in San Francisco, testified that previous to the consolidation of the Southern Pacific and Union Pacific, the former agency endeavored to route its Atlantic seaboard freight by the Sunset Gulf Route, and the Union Pacific agency was at the same time soliciting that traffic by Ogden. (Folio 5050.)

Mr. Guyett, now in the insurance business, was connected with the Union Pacific at San Francisco from 1892 to 1904 in the passenger department. (Folio 5060.) He

testified that the Southern Pacific put on the Sunset Limited train to the east by way of New Orleans about 1897 or 1898, possibly earlier. It was a first-class Pullman equipment train, and was largely advertised by billboards, posters and newspaper and magazine advertising, and travel by that route to the east was very thoroughly worked by soliciting agencies. In working for the Union Pacific he met with this activity on the part of the Southern Pacific, and very substantial business was secured by the Sunset Limited. (Folios 5062-3.) He also testified to the efforts made to secure immigrant business by the respective lines (Folio 5064), and that the Union Pacific worked hard for the eastound passenger traffic from Los Angeles, but the larger part of that business went east by either the Santa Fe or the Southern Pacific. (Folio 5065.)

Mr. Jacobs, President of the California Canneries Co. and of the Napa Cannery Co., canning all kinds of fruit, which is marketed throughout this country and in Europe, testified that previous to 1901, the largest part of his traffic moved to the seaboard by the Sunset line; that the Southern Pacific made a great effort to get freight by the Sunset, and the Union Pacific had a soliciting agency in San Francisco and endeavored to secure traffic by that route. (Folio 5087.)

Mr. Michaels, Vice-President of Langley & Michaels Co., wholesale drug house, the business having been in existence since 1850, testified that his business was formerly solicited for the Sunset Route by the Southern Pacific, and also by the Union Pacific, and the Santa Fe. (Folio 5090.)

Mr. Settle, Traffic Manager for E. Clemens Horst Co.,

in the business of growing hops in California, Oregon, and British Columbia, testified that the hops they shipped from the Willamette Valley mostly go to Europe. Years ago hops used to move from that region by the Shasta Route, Sacramento and Ogden; also by the Sunset Route. (Folios 5093-4.)

Mr. Wolff, for twenty years in the canned goods and dried fruit business at San Francisco, and whose goods are marketed all over the world, testified that previous to the time the Southern Pacific and Union Pacific came under one management, the Southern Pacific endeavored to route all shipments to the Atlantic seaboard territory by the Sunset Route, and the Union Pacific at the same time solicited his business to the same territory. (Folio 5119.) Business to Europe also usually moves by New York either all rail or Sunset. (Folio 5120.)

Mr. Rosenberg, of San Francisco, shipper of dried fruits, stated that previous to the time the Southern Pacific and Union Pacific came under one traffic management, the Southern Pacific solicited his Atlantic seaboard business from California by the Sunset Route; the Union Pacific by its route. (Folio 5124.)

The natural competitive character of these systems is emphasized by the testimony of Mr. Melvin, now the Traffic Manager of the California Fruit Growers' Association, consisting of twenty-two or twenty-three canneries located in different parts of the state, canning all kinds of green fruits, and also asparagus, and shipping to all parts of the world. He says that his traffic moves to the eastern part of the United States through the Ogden gateway, by the Santa

Fe, by the El Paso gateway, by Sunset Gulf, by the American-Hawaiian, Pacific Mail, and in some instances Sunset all rail. (Folio 5137.)

Mr. Ray, of the Ray Manufacturing Co., manufacturer and wholesale and retail dealer in stoves and ranges, ships stoves and material from which they are manufactured, from Massachusetts and other eastern points. His traffic has moved by the Union Pacific, the Sunset Route, the American-Hawaiian line, and the Pacific Mail line. (Folio 5144.)

Mr. Lincoln, now Commissioner of the Merchants Exchange Traffic Bureau at St. Louis, formerly General Freight Agent and Assistant Freight Traffic Manager of the Missouri Pacific, which company participated in Pacific coast business by reason of its lines to El Paso and Pueblo, testified that his company had commercial agents in the principal cities of the East, and such business as they secured going west by Pueblo moved to San Francisco in connection with the Central Pacific from Ogden, and moved to Portland by the Oregon Short Line or by the Central Pacific by Sacramento commonly known as the Shasta Route, and that the strongest competitor for Pacific coast business out of New York was the Sunset Route. (Folio 3747.) On transcontinental eastbound business the Sunset Route of the Southern Pacific competed against all the lines participating in the business east of Ogden. (Folio 3749.)

Mr. Babcock, now Commissioner of Traffic of the Commercial Club Traffic Bureau, Salt Lake City, and for many years in railroad service with different companies, and who was from 1892 to 1901, with a short intermission, in charge

of the traffic of the Rio Grande Western Ry. Co., owning a line from Grand Junction, Colo., to Ogden, and from that time until 1903 Assistant General Traffic Manager of the Denver & Rio Grande at Salt Lake City, testified that business from the east to Portland and Oregon points moving over the Rio Grande, formerly moved between Ogden and Portland and Oregon points over the Southern Pacific. The business of the Union Pacific between the east and Portland and Oregon points, moved from Granger to Portland over the Short Line and the O. R. & N. (Folios 3942-3.) The Southern Pacific sought this business over their own rails from Ogden to Portland. (Folio 3944.)

During the time that the Short Line was separate from the Union Pacific, the Rio Grande worked with the Short Line and hops were moved to the Atlantic seaboard over the Short Line, Rio Grande and eastern connections in competition with the Southern Pacific Sunset Route. (Folio 3945.)

It is a significant fact that the defendants spent several weeks in introducing testimony to show with infinite detail the improvements made since 1901 on the right-of-way and equipment of the Union Pacific and Southern Pacific, but made no effort to break down or contradict the showing made by the complainant as to the active competition thus existing up to the time of the merger between the two systems The witnesses sworn on behalf of the defendants and whose testimony appears in Volumes 9, 10 and 11, were entirely their own employees, with the exception of Mr. Kahn, one of the defendants, and who is a director and member of the Executive Committee of the defendant Union Pacific Railroad Company. It is true that the defendants read into the record the testimony of J. M. Hannaford, Vice President of the Northern Pacific

Railway Company, and B. Campbell, Vice President of the New York, New Haven & Hartford Railroad Company, given before the Interstate Commerce Commission in 1907, but both of these witnesses corroborated the testimony of the witnesses for the complainant as to the competition we have discussed and as to other competition hereafter discussed in this analysis. Mr. Hannaford, who has been connected with the Northern Pacific Railway Company in charge of traffic for about thirty-seven years, testified that previous to the Interstate Commerce Act when business was pooled, Mr. Stubbs in the traffic meetings endeavored to get as large a percentage of the business as he could for the Southern Pacific system, and Mr. Munroe and other gentlemen representing the Union Pacific, as large a percentage of earnings and as small a percentage of expenses as possible for the Union Pacific. Folios 8038-39. He further testified that prior to 1901 there was active competition throughout the Atlantic seaboard territory between the different trans-continental lines for Pacific Coast business, and he mentioned the Santa Fe, the Union Pacific, the Northern Pacific, the Rio Grande, the Sunset Route of the Southern Pacific, the Great Northern, and the Canadian Pacific, as being engaged in that competition.

Folios 8039-40.

He further testified that in handling their traffic it had been the practice of the Northern Pacific to maintain general agents and commercial agents at different large points in the East, and that they there met the competition of the agents of the Southern Pacific and the Union Pacific, and recently at certain places, of agents representing both of those companies, and that such commercial agents so maintained at different points throughout the country were of

great assistance to the lines they represented in securing the routing of traffic over those lines; (Fol. 8042.) that the passenger tourist business was a large business and actively competitive, and was solicited by the Southern line. (Folio 8043). While Mr. Hannaford expressed rather strange views as to the question of competition where naturally competitive lines were owned by the same interest, he still testified in answer to Commissioner Lane, that there was value in competition between roads in the securing to the shipper, of facilities in transportation. (Folio 8060.) Mr. Campbell testified that when he was in charge of the traffic of the O. R. & N. at Portland, business originating in Atlantic seaboard territory destined to Portland to some extent moved by the Sunset Route, and business from the same territory came to Portland all rail over the Union Pacific, Oregon Short Line, and Oregon Railroad & Navigation Co., and their eastern connections; also over the Northern Pacific; (Folios 8075-6), that in competing with the Southern Pacific that line at times made lower rates in an effort to get the business to Portland; that the business consisted of merchandise and traffic of that character from the seaboard territory; (Folios 8076-7); that the Sunset Route absorbed the rate into New York from points in New York and Pennsylvania for the purpose of getting the business away from the all rail routes, which were the Great Northern and the Union Pacific. (Folio 8085.) Traffic formerly moved to the East by way of the Sacramento gateway to Ogden, and thence to the East over the Rio Grande or the Union Pacific. (Folio 8088.) He further testified that wool from the Willamette Valley moved to the Atlantic seaboard both ways, by the O. R. & N. and the Southern Pacific. He also testified that in his opinion, of the Atlantic seaboard business, the Sunset

Route handled into Portland from 20 to 25% (Folio 8117), and of the total competitive business east of the Missouri River, the Sunset Gulf Route carried from three to five per cent. (Folio 8118.)

Mr. Stubbs, testifying for the defendants, gave very interesting testimony at Folios 6561 to 6563, as to the initial competition made by the Southern Pacific management over the Sunset Route as against the all-rail lines of the Union Pacific and its connections. He described the effect of the ability of the Sunset to make prompt settlement of claims as against the Union Pacific and its Eastern connections. (Folio 6565.) This corroborates the testimony of Mr. Clifford to the effect that the general agent of the Union Pacific at San Francisco was given authority to settle claims so as to more effectually compete against the Sunset Route. Mr. Stubbs further testified that previous to the amalgamation, the Union Pacific maintained a traffic agency in San Francisco which was trying to route business to points on the seaboard via Ogden, and the Southern Pacific agency was trying to move the business, so far as it could properly move that way, to the Atlantic seaboard via the Sunset Route. (Folios 6629-30). After the Sunset Route was established the Union Pacific and its eastern connections continued to try to give good service, and through their soliciting agents in New York actively solicited transcontinental business; that if the Southern Pacific secured the business and sent it by the Sunset, the Union Pacific got no share of it. (Folio 6633.)

Mr. Spence who succeeded Mr. Hawley as General Agent of the Southern Pacific in New York, testified that his function as Southern Pacific Agent was to work business

from New York to California by the Sunset Route, and the function of the Union Pacific representative was to work it by his route, and that he regretted that he had never known the entire New York business to be attracted to the Morgan Line ships, but that a substantial tonnage moved west over the trunk lines to California. (Folio 6730.) He further stated that in the aggregate it was fair to say that the bulk of the traffic westbound out of New York, to California, can move boat and rail as well as all rail. (Folio 6758.) At Folio 6764 he stated that when Mr. Hawley was at the head of the Southern Pacific agency he was working under him, and the Union Pacific agents were at that time soliciting business for that company from shippers, and he, in endeavoring to route business by the Sunset, met the efforts of the Union Pacific agents who were trying to ship it by the Union Pacific. He further testified at Folios 6765-6, that the earnings of the Sunset Route on California business for the year ending June 30, 1900, were westbound $2,406,-915.05, and eastbound $1,658,568.15, or a total of $4,065,-483.20; that since 1900 the development of the state of California has been very marked and the amount of traffic moving between New York and California has increased enormously. (Folio 6766.) At Folio 6769 he says the time of the Sunset Route from New York to California is sixteen or seventeen days, about the same as made by the all rail lines. At Folio 6771 he repeated the statement made on direct examination, that in 1900 the Sunset Route carried 34.79% of the total business to California and Nevada. He had previously stated that the amount carried to Nevada by the Sunset Route was very small, so it is a fair assumption that about one-third of the California business moved Sunset, and if their earnings aggregated slightly over four millions, as Mr. Spence testified, the entire business inter-

changed between California and New York, which was the subject of competition, was about twelve million dollars per year at that time, and since then, as Mr. Spence testified, it has greatly increased.

Citrus Fruit and Vegetable Movement.

There is very large traffic east bound to the Atlantic seaboard and other points in the east, consisting of oranges, lemons and other fruits, and certain vegetables such as celery, which was the subject of competition between these lines. Los Angeles is, perhaps, the central point of origin of this traffic, but it is actually shipped in great quantities from many towns in the interior of California, control of the routing, however, being largely consolidated at Los Angeles. Previous to the building of the San Pedro, Los Angeles & Salt Lake Road, this traffic found its way to the east over three routes: first, the Union Pacific-Southern Pacific, by way of Ogden; second, the Santa Fe; and third, by the Sunset Route of the Southern Pacific. Prior to the construction of the San Pedro, Los Angeles & Salt Lake Road, the effort of the Union Pacific, of course, was to work this by way of Ogden, and thence over its line. Since the construction of that line, certain traffic has been solicited and worked by the Union Pacific in connection with that route by way of Salt Lake City. The rate on oranges to the east for twenty years had been $1.25 a hundred pounds. That rate applied to all territory in the United States east of the eastern boundary of Colorado, except certain southeastern territory and Canadian territory, where there was a still higher rate than $1.25. This was testified to by Mr. Woodford, General Manager of the California Fruit Growers' Exchange. (Folios 1250, 1251.) This testimony was given at a hearing before the Interstate Com-

merce Commission at Los Angeles, February 8th, 1907. (Folio 1246.) Within a few days after that investigation, the railroads voluntarily reduced this rate which had so been in force for twenty years, to $1.15. We call attention to these rates to show the large earnings to the carriers accruing from this business, and hence its importance as competitive traffic. The bulk of the shipments by the Sunset Route moved by El Paso, but the testimony in the east showed that it had also moved by New Orleans (Markham Fol. 3703). The Union Pacific was necessarily competing for this business as against the Santa Fe and the Sunset Route, for the reason that it received no earnings whatever upon any traffic moving by either of those routes.

Since the construction of the San Pedro, Los Angeles & Salt Lake Road, it is, of course, in the interest of the Union Pacific to move all the traffic it can over that route, for the reason that the rate to the Missouri River is divided on a mileage basis between the Salt Lake Road and the Union Pacific, which results in giving the Union Pacific the haul for a thousand miles over its own rails, and through the ownership by the Oregon Short Line of one-half of the capital stock of the Salt Lake Road, it is interested to the extent of one-half of the haul from Los Angeles to Salt Lake. Or in round figures, the interest of the Union Pacific is a thousand mile haul to the Missouri River from Salt Lake City, and one-half of the 800 mile haul from there to Los Angeles, or a total of 1,400 miles to the Union Pacific, as against 400 to the Clark interest in the Salt Lake. If the traffic moves by way of Ogden, which is about 1,200 miles from Los Angeles by way of the Southern Pacific, the proportion of the through haul accruing to the Union Pacific proper is less than one-half the through rate, and it has only a 46 per cent interest in the revenue of the

Southern Pacific. For that reason, the Traffic Manager of the Union Pacific, Mr. Munroe, acting, of course, under the instructions of the head of the traffic department of the consolidated system, and accompanied by Mr. McCormick, Assistant Director of Traffic, was in Los Angeles in the autumn of 1906, just before the testimony was taken by the Interstate Commerce Commission, actively soliciting this traffic over the Salt Lake and Union Pacific.

See testimony of Mr. Wells, General Manager of the San Pedro, Los Angeles & Salt Lake Road (Folio 1221); testimony of Mr. Woodford (Folio 1248).

This traffic is, of course, directly competitive with that moving by El Paso or New Orleans, and is also competitive with traffic moving by the Southern Pacific and the Rio Grande. Therefore the situation as to this fruit movement is, first, that prior to the amalgamation of these lines, the Union Pacific was competitive with the Southern Pacific-Sunset Route; second, since its interest in the total revenue is that way, it is, since the construction of the Salt Lake Road, naturally competitive with both the Ogden Route of the Southern Pacific and the Sunset Route of the Southern Pacific.

Mr. Munroe when called as a witness for the defendants testified that the San Pedro was the Union Pacific's preferential route for Southern California traffic both east and westbound, and that he had been out at Los Angeles at times soliciting that traffic over the San Pedro in connection with the Union Pacific, and that the Southern Pacific traffic organization in Los Angeles was seeking the same business, and the business was competitive with the through route formed by the Southern Pacific via El Paso, and that in soliciting this traffic for the San Pedro-Union Pacific route,

he was working against all competitors, one of them being the Southern Pacific from Los Angeles via El Paso. (Folios 6831-2.)

From this great mass of testimony it would seem to be conclusively established that not only as to business moving between New York common points territory and Portland and vicinity, where traffic was carried by the Southern Pacific, both Sunset Gulf and Sunset all rail, and also over the route via Ogden and Sacramento in connection with the Rio Grande and other lines leading to the east in direct competition with the Union Pacific, Oregon Short Line and Oregon Railroad & Navigation Co. in handling which traffic neither system used a foot of the rails of the other, and as to which competition, no witness has suggested a doubt, these lines were also competitive as to an enormous traffic moving between New York common points and California. The only difference between the movement to California and to Portland and Oregon points consisted in the fact that from Ogden to San Francisco the California traffic moved over the rails of the Southern Pacific. But the Union Pacific line is a thousand miles long. Through its friendly connections east of the Missouri River, it constitutes a direct line from the seaboard to Ogden, 2,500 miles in length in round figures. Under the laws of Congress, as we will show in our brief of the law, the Union Pacific and the Central Pacific lines were required to be operated as a continuous line without discrimination; but irrespective of the law, the Southern Pacific, as a matter of self-preservation, was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul, the division of the through rate accorded to it by consent, from 1870 down to the present time, as testified to by Mr. Stubbs. The fact

that at Omaha the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, Chicago, St. Paul, Minneapolis & Omaha, the Chicago, Burlington & Quincy, the Rock Island, the Wabash, the Chicago Great Western, and the Illinois Central, were pouring vast streams of traffic into the Union Pacific to be transported thence to the coast, made that a very powerful transcontinental line; and in addition to this traffic moving through Omaha, there are many lines connecting with the Union Pacific at Kansas City, with which transcontinental business was interchanged.

The statistics to which we shall later refer, show the immense earnings accruing monthly to that system for the handling of business to and from California points. These two great routes from the east were open at equal rates, the business was fought for by the one against the other by all means known to railroad solicitors, and it is idle speculation to consider what might have been done by the Southern Pacific in the way of diverting traffic, or raising divisions or anything else of that sort. It was, as a matter of practical railroading, an impossible suggestion that the Southern Pacific would deliberately refuse to do business turned over to it by the Union Pacific and its eastern connections, to secure which it was at no expense, and which was worked in connection with its local and intermountain business. This did not in any way, however, prevent the Southern Pacific from endeavoring to take every pound of freight it could by its own through line from one coast to the other. Every railroad man who testified, and it must be remembered that the natural sympathies of railroad men are not with the complainant here, was emphatic as to the strenuous competition and active efforts of the Southern Pacific on the one hand, and the

Union Pacific on the other, to get and keep from each other this great traffic; and it is a new suggestion, born out of the necessities of this case, that the Union Pacific could not be a competitor of the Sunset Route of the Southern Pacific because it does not reach through to California, and hence had no power, independent of its connections, to make rates. As we have shown above the power it concededly possessed to make rates to Portland included the power to make rates to San Francisco.

Some of the witnesses on cross-examination testified that where the Southern Pacific agencies were unable to move traffic by the southern route to Pacific Coast points, they endeavored to get the short haul from Ogden to the coast as against the competition of other lines. This, however, in no way modified the testimony as to the energetic efforts made by the Southern Pacific to route traffic by the Sunset Route and similar efforts by the Union Pacific to move the same traffic through the Ogden gateway. If traffic went by the Sunset the Union Pacific received no part of the revenue. It did not have the aid of the Southern Pacific organization in moving any traffic by Ogden which could be secured for the Southern route. In spite of the testimony that the service was about the same over both routes, it is undoubtedly the fact that the shortness of the line by way of Ogden commended it to certain shippers who could not be persuaded that the longer line by the south could afford equally good service, and certain commodities could not be transferred to boats, and hence could not move by the Morgan Line; and in the case of traffic that would not move by the southern route in spite of the efforts of the Southern Pacific organization, it is natural that its agencies should endeavor to get the short haul from Ogden as against the competition of other lines. It will be remem-

bered, however, that the testimony shows that before the amalgamation, the Southern Pacific, so far as its Ogden route was concerned, was impartial between the Denver & Rio Grande and the Union Pacific. It did not join forces with one as against the other.

As a matter of fact, it is clear from all the testimony in the case, that the effort to move business by the Central route was chiefly exerted by the Union Pacific and the Rio Grande, together with their connections to the east. As to traffic that had to go by this Central route and would not move by the Southern route, it is quite likely the fact, as was said by Mr. Morton, that the chief strife was east of Ogden, but the competition, the destruction of which is complained of in this action, was as to that great mass of traffic that would move freely by either route. The Southern Pacific bent its every energy to send that traffic by the Sunset Route, and the Union Pacific to send it by the Missouri River.

Complainant's Exhibit 181 (Folios 5494 et seq.), which is a contract made as far back as 1872, between the Pacific Mail Steamship Co., then operating steamships on each side of the Isthmus, and the Union Pacific Railroad Co., and which was received in evidence without objection, shows that nearly forty years ago railroad and steamship men regarded the Union Pacific as a competitor of the through lines. The preamble to that agreement, so far as material, reads as follows:

> "This indenture made and executed this first day of October, 1872, by and between the Pacific Mail Steamship Company a corporation duly created under the laws of the state of New York, and owning steamships and conducting transportation between the cities of New York and San Francisco via Panama, of the first part, and the Union Pacific

Railroad Company, a corporation created by the laws of the United States of America, also *conducting transportation between said cities of New York and San Francisco via connecting roads*, and operating a railroad between the city of Omaha, state of Nebraska, and the point of junction with the Central Pacific Railroad, of the second part, WITNESSETH:

That by reason of the natural competition between the parties hereto in relation to the transportation of merchandise and other freight between the two cities of San Francisco and New York, and from other causes, the rates at which said business is transacted are liable to uncertainties and fluctuations which tend to impair the usefulness of both said companies to the public, and render the obtaining by either of said companies of a reasonable and just compensation therefor doubtful and precarious," etc.

From that date to the present, we doubt whether any disinterested railroad man would for a moment think of suggesting that this great railroad system extending for a thousand miles from the Missouri River to Ogden and also nine hundred miles further to the waters of the Pacific at Portland, did not necessarily and naturally constitute a competitor of any through route from one coast to the other.

b. COMPETITION AS TO TRAFFIC BETWEEN POINTS IN THE INTERIOR OF THE COUNTRY AND THE PACIFIC COAST.

There has been incidentally mentioned in discussing the traffic between the Atlantic seaboard territory and the Pacific Coast, certain of the movements of freight to interior points, such as the hop movement out of Oregon, which in part found its destination at interior points such as Cincinnati, St. Louis and Milwaukee, but we will now take up somewhat in detail the testimony as to the active competition between the Sunset Route (all rail) and the Union Pacific for business originating in the great manufacturing and trade centers of the interior of the country, beginning at the west line of the New York common points territory, to-wit, at Buffalo and Pittsburg, and thence west even as far as Kansas City, and show that the traffic to and from all this great region was the subject of the most energetic competition. It is important to consider in connection with this matter that the rates by the two routes from all this great interior country, have been maintained at all times at the same figure. It is inconceivable that rates would be kept in over a long period of years, if it was not expected that traffic would move by these various lines. Tables of rates were introduced in connection with the testimony of Mr. White of the Interstate Commerce Commission, as we have before observed at pages 866 to 883 inclusive, and at Folio 5601 he testifies that the transcontinental rates shown upon the said statements were the same by all the lines from the Canadian Pacific down to the Sunset. The rates being equal and the same incentive existing for competition that we have called attention to in connection with Atlantic seaboard traffic, that is, the divisions being such as to afford much greater revenue to the Southern Pacific if traffic moved by the Sunset Route, it is not strange that the traffic

officials in charge of the business of that company actively and energetically endeavored to route business by the Sunset Route, competing with the Union Pacific for that business, even though that route in some instances was substantially longer than by the lines through the Missouri River gateways. They not only sought to move business by that route, but they succeeded.

Mr. Hawley, during nearly twenty years in charge of all the traffic of the Southern Pacific from the Mississippi River to the Atlantic seaboard, testified as follows at Folio 1414, after saying that he endeavored to route all the New York common points business by the Gulf routes:

> "Q. And as to business originating at Pittsburg or Cincinnati and in that territory, how did you endeavor to work that business to the coast?
>
> A. Via New Orleans in connection with all rail lines.
>
> Q. Did the Union Pacific maintain eastern agencies at that time?
>
> A. Yes sir.
>
> Q. And were those agencies working in competition with you?
>
> A. Naturally.
>
> Q. Was that the same with the Santa Fe and the other lines?
>
> A. Just the same."

And again at Folio 1421:

> "Q. Now, as to the territory beginning at Pittsburg and Buffalo and extending westerly, what territory was embraced in what is called Pittsburg common points?
>
> A. Well, there are numerous points.
>
> Q. How far west did it go, if you remember?
>
> A. There were some few points just east of Pittsburg which took Pittsburg rates. We did not compete for that business via New York.
>
> Q. But you did by way of New Orleans?
>
> A. For iron and steel products, generally. * *

I am only speaking now of territory east of Pittsburg.

Q. Yes, I know, but I am asking you now of the territory west of Pittsburg.

A. Well, I don't know as to that. We did not compete for that business at all by way of New York.

Q. I understand; not by way of New York, but did you by way of New Orleans and the rail lines?

A. Yes.

Q. Did that business take the same rate via New Orleans to the coast as it did via Omaha?

A. Yes, there was a certain group of points that took Pittsburg rates both east and west of Pittsburg, and they were routed by all rail either by Cincinnati or by Chicago.

* * * * * *

Q. Now there was Cincinnati and common points too?

A. Yes.

Q. Did all that territory take the same rates each way?

A. That was open to all routes.

Q. And was that also competed for?

A. Yes sir.

Q. By the same lines?

A. Yes sir.

Q. By the Union on the one hand and the Sunset on the other?

A. Yes.

Q. *How far west did this competition extend between these lines—to the Mississippi River?*

A. Yes sir.

Q. How about the territory in Tennessee and Alabama, the southeastern territory?

A. That was competitive as well."

Mr. Throckmorton testified, at Folio 1469:

"Q. From territory that was not tributary to the Morgan line but originated west of Pittsburg, how did you endeavor to route it?

A. All rail Sunset Route to New Orleans."

(The word "originated" in the question is by mistake in the record printed "tributary.")

On cross-examination he was asked how this competition could be carried on in view of the fact that the Southern Pacific owned the line west of Ogden. He replied, at Folio 1491:

"A. Well, we always tried to divert it if we could, even after it moved there. If it moved via Omaha and Ogden and that route, and we knew it, we would try to put it down by the all rail line via New Orleans.

Q. Do you mean that the Southern Pacific—

A. I mean if we found out a car—if I got a telegram saying a car had moved Union Pacific and Southern Pacific, I would wire ahead to know why it moved that way, and we would always try to get it via our all rail route, the Sunset Route.

Q. Do you mean if the Union Pacific got control of a car of freight that was going to the Gulf and going over the Southern Pacific line from Ogden, that the Southern Pacific would still try to avoid taking that car?

A. Oh, no, not that car; future cars.

Q. Well, in other words, you mean what you stated a number of times, that you would work all the business you could by way of New Orleans?

A. Yes sir, that is exactly what I mean."

Mr. Swope, of the Louisville & Nashville Railway, testified that the territory under his jurisdiction was east of Buffalo and Pittsburg, but that he also solicited business originating in Cincinnati and Louisville and that territory; that if business was moving from that territory which was controlled in New York or the territory east of Buffalo and Pittsburg, it was reported to him, and he endeavored to secure it via New Orleans; that his interests were entirely

with the Sunset Route of the Southern Pacific as against the Union Pacific-Ogden route. (Folios 1744-5.)

Mr. Gregory, Traffic Manager of the Central Foundry Co., with foundries located in Alabama, Tenessee, Indiana, and other states, testified that traffic moved from Anniston, Alabama, and South Pittsburg by the Southern Pacific, and from the same places by the Union Pacific, although the movement by the Southern Pacific from South Pittsburg is exceptional. (Folio 1752.)

Mr. Stuyvesant Fish, for many years President of the Illinois Central, was asked whether prior to 1901 the Union Pacific and the Sunset Route of the Southern Pacific were competing for business along the Illinois Central, and if so, in what territory. He replied (Folio 1815):

> "A They were competing for our business by the two several lines; that is to say, the Union Pacific taking it at Omaha for their direct line west, and the Southern Pacific taking it at New Orleans for their more circuitous route around through Southern California.
>
> Q. Prior to 1901, how active was that competition?
>
> A. I think it was as active as between any two roads that were in the business.
>
> Q. What territory did that competition cover?
>
> A. The competition between those two railroads covered the whole territory as I understand it. Of course the Illinois Central did not reach the eastern states territory.
>
> Q. No, but I mean did it cover the whole of the territory that is reached by the Illinois Central; that is what I want to get at.
>
> A. Yes."

This territory speaking broadly reached from the Missouri River on the West to Cincinnati on the East and from Chicago on the North to New Orleans on the South.

Mr. Henry, who has been Traffic Manager for various companies, like the Pressed Steel Car Co., and the American Window Glass Co. at Pittsburg, testified that previous to 1901 Mr. Herring, the Agent of the Southern Pacific at Pittsburg, was endeavoring to get the long haul by New Orleans if he could, the Union Pacific endeavoring to route traffic by Kansas City or Omaha. (Folio 2094.) He further said that he routed some of his business by way of New Orleans because of his friendly feeling towards the representatives of some of the lines soliciting that business. He further testified:

> "A. The personality of a representative nowadays has considerable influence in securing business; that is, his activity in showing his disposition to do what he can to facilitate your shipments and your business in general, in small ways, which he can within the law." (Folios 2099-2101.)

Mr. Fowler, many years in the railway business in Pittsburg, and for something over two years, from 1891 to 1893, representing the Union Pacific there, testified, at Folio 2105, that at the time he was with the Union Pacific, the conditions as to competition between the Union Pacific and the Southern Pacific for coast business was very strong, and that the efforts of the Southern Pacific were to get it by New Orleans. He gives an instance of a competition between himself and Mr. Herring over a consignment of trolley poles, where there was some question as to the proper classification. He succeeded in getting the business, while Mr. Herring was endeavoring to send it by New Orleans. (Folio 2108.)

Mr. Paar, of Canton, Ohio, in charge of the traffic of the Diebold Safe & Lock Co., manufacturers of vaults,

safes, safe deposit boxes, etc., the largest manufacturers of articles of that kind in the United States, testified that prior to 1901, his traffic was solicited by the Union Pacific agency, and also by the Southern Pacific agency, and that the latter was endeavoring to move the traffic by way of New Orleans. (Folio 2123.)

Mr. Townsend, Traffic Manager of the National Tube Co. in Pittsburg for ten years, and previous to that for twenty years in the railroad business, the Tube Company being the largest manufacturer of wrought pipe in the world, testified, at Folio 2134, that at the time Mr. Hawley of New York was the eastern representative of the Southern Pacific, and Mr. Choate was the representative of the Union Pacific in Pittsburg, there was competition between the Union Pacific and Southern Pacific for coast business. On cross-examination he said the competition then was between the Sunset Route by way of New Orleans, and the other rail lines. (Folios 2135-36.) And at that time the Union Pacific had its own soliciting agency in Pittsburg and solicited business exclusively in the interest of its own line, and the Southern Pacific had its own soliciting agency and solicited business for its own line irrespective of any other line. (Folio 2139.)

It is admitted that since the consolidation, Mr. Herring has been the joint representative of the two systems.

Mr. Ogden, Traffic Manager of Jones & Laughlin, the great steel manufacturers of Pittsburg, testified that previous to 1901 the Union Pacific and Southern Pacific had separate agencies in Pittsburg, calling on him and soliciting business for their respective lines in competition, and that now Mr. Herring, representing both lines, and his

assistants, call on him for business, and give no preference to one line over the other. (Folio 2145.)

Mr. Lent, for four years Traffic Manager of a number of large manufacturing companies in Pittsburg, previous to that Traffic Manager of the Union Steel Co., before that in railroad service, testified that previous to 1901, the Union Pacific and Southern Pacific maintained separate agencies, the agent of each line soliciting business in the interest of his road, and the Southern Pacific endeavoring to work his business to the coast by New Orleans. (Folio 2172.) Again, at Folio 2184:

> "Q. You have spoken about the consolidation of these agencies here, in Mr. Herring, and Mr. Lovett has asked you a number of questions with reference to it. When the agencies were separate, the agent of the Union Pacific, Mr. Lothrop or Mr. Choate, was trying to get business exclusively via that route, wasn't he?
>
> A. Yes sir.
>
> Q. The agent of the Southern Pacific, Mr. Herring, was trying, if possible, to get business via the Southern route?
>
> A. Exactly.
>
> Q. So that there was active competition between the two wasn't there?
>
> A. There was."

He said, at Folio 2174, that previous to the amalgamation of the agencies of the Southern Pacific and Union Pacific, it was the custom of the transcontinental lines to maintain commercial agencies in Pittsburg. He then testified:

> "Q. What are these agents doing for these various lines?
>
> A. The solicitation on their part seems to be more in the matter of advocating the service that the road is capable of giving, and supplying rates

and tariffs, and giving such information as helps the shipper out on matters that the shipper cannot have as intimate a knowledge of as the agent.

Q. Do you regard these agencies as efficient and useful to railroads in securing business?

A. Yes sir."

Again, at Folio 2189, after stating that the rates were uniform by the different lines, he testified:

"Q. So that the competition which has existed for many years—the legitimate competition which has existed for many years—has been competition in service and competition in solicitation of business?

A. Yes sir.

* * * * * *

Q. And in soliciting business, the soliciting agent has used the various means of inducing traffic to go via his line, that have been stated here on the stand?

A. Yes sir.

Q. Now, prior to the amalgamation of these agencies here in Pittsburg—the agencies of the Southern Pacific and the Union Pacific—that competition, the only competition that can legitimately exist, was in existence between the Union Pacific Route and the Sunset as you have testified?

A. Yes sir."

Mr. Watson, representing Knowles, Taylor & Knowles Co., large manufacturers of earthenware at East Liverpool, Ohio, testified that Mr. Choate, representing the Union Pacific, solicited his business in former days, and that Mr. Herring solicited business at the same time by way of New Orleans, and that he made shipments by that route. (Folio 2206.) He was a rather humorous individual, and he testified further, at Folio 2214, after saying that he remembered in the old days that efforts were made by the Southern Pacific to send business via its line:

"Q. And there was competition between them and the Union Pacific people, who tried to send it by Omaha?

A. Well, I never got anything out of it; but I know they were always hustling for it."

And again, at Folio 2215, after defendants' counsel had endeavored to develop the fact that the Southern Pacific was the owner of the line west of Ogden, over which the Union Pacific traffic had to move, Mr. Watson said:

"A. In those days, we thought we were shipping by a competing line when we shipped by the Union Pacific and Central Pacific.

Q. You thought you were shipping over a line—

A. In those days, yes.

Q. —that was competing with the Southern Pacific?

A. Yes, or any other lines.

Q. But you did not know in those days that the Southern Pacific controlled the Central Pacific?

A. No, I am not up in stocks."

It is perfectly evident from this testimony that Mr. Herring, the Southern Pacific representative, was not endeavoring to route any traffic by Ogden, for if he had been, he would certainly have disclosed the fact that his company controlled the line from Ogden west.

Mr. Belleville, Traffic Manager of the Pittsburg Plate Glass Co. since 1898, said that prior to 1901 the San Francisco business was pretty fairly divided; that the Union Pacific got a little more than half of it, the lines by New Orleans about a quarter of it, and the rest was divided among two or three different routes; that he knew Mr. Herring and Mr. Choate when he represented the Union Pacific, and that those gentlemen were competing with each other for coast business then. (Folios 2220-21.)

On cross-examination, the defendants' counsel endeavored to exploit his favorite theory that the Union Pacific had to send their traffic over the Southern Pacific from Ogden and could therefore not compete, with very unfortunate results, as follows, at Folio 2222:

> "Q. Mr. Choate, or other agent, in soliciting for the Union Pacific then, was necessarily soliciting for that portion of the route of the Southern Pacific, was he not?
>
> A. I presume so; though he did not talk about the Southern Pacific."

Then again, speaking of Mr. Herring:

> "Q. His solicitation was really against the Atchison, was it not, Mr. Belleville?
>
> A. No, I think it was against the Union Pacific as well as the Atchison. The Union Pacific was the strong competitor at that time for the Pacific coast business, much stronger than the—
>
> Q. Competitor for what?
>
> A. Particularly in the early days from 1898 to 1901.
>
> * * * * * *
>
> Q. You say that the strong competitor was the Union Pacific, you mean competitor for what?
>
> A. Competitor of the Southern Pacific for coast business.
>
> Q. Was it stronger than the Santa Fe?
>
> A. I regarded it so at that time. That was in 1898." (Folios 2223-4.)

Mr. Crowley, salesman for the Carnegie Steel Co., and for five years previous to 1901 freight solicitor for the Southern Pacific at Pittsburg, testified that he endeavored to route traffic for California by New Orleans, the traffic moving partly by way of Cincinnati and some of it by St. Louis by the Illinois Central, the Union Pacific being sep-

arately represented and working traffic by Ogden. (Folios 2236-7.)

Each company was also represented at Pittsburg by a passenger agent, and the Sunset Route was advertising its train to the coast. (Folio 2238.)

Mr. Woodside, General Freight Agent of the West Side Belt and the Wabash Pittsburg Terminal Railroads at Pittsburg, from 1902 to 1907 Traffic Manager for the Pittsburg Coal Co. and the River Coal Co. and allied interests, and previous to that for fifteen years General Agent of the Erie Railroad in Pittsburg, testified that he knew the Southern Pacific and Union Pacific representatives in Pittsburg when the offices were separate, and that the representatives of those roads were competing with each other for coast business. (Folios 2249-50.)

Mr. Herring, the Southern Pacific Agent, endeavored to route Mr. Woodside's traffic through Cincinnati and New Orleans, and it moved to Cincinnati by way of the Erie, and thence by the Louisville & Nashville, or Queen & Crescent, and later by the Illinois Central. (Folio 2251.)

Mr. Blackburn, who routes the shipments of the W. H. Mullins Co. of Salem, Ohio, very large manufacturers of architectural sheet metal work, pressed steel bolts and fireproof windows, shipping their products practically all over the world, testified that Salem, which is about seventy miles from Pitsburg, takes the Pittsburg rate. When Mr. Herring was agent of the Southern Pacific, before the amalgamation of the agencies he solicited transcontinental freight by New Orleans. His company still ships some freight to the coast by New Orleans. At the same time the Union Pacific representative was soliciting the same traffic, each

agency urging as arguments for business, that they would give prompt service and trace cars. (Folios 2256-8.)

Mr. Thompson, Traffic Manager of the Oil Well Supply Co., manufacturers of everything that is used in the drilling and operating of oil wells, pipe lines, and also manufacturing boilers, engines and machinery, being the largest concern of the kind in the world, and shipping their product to all countries and places where there is any gas or oil, testified that their business was moving to the coast over various lines, and that his concern had moved goods by way of New Orleans from Reading Mills and Pittsburg, but that they did not now ship as much as they used to by that route. (Folio 2269.) He further testified that Mr. Herring had been his friend for twenty-five or thirty years, and he solicited the traffic by New Orleans when he represented only that company, and that Mr. Herring's solicitation when he was working the New Orleans route exclusively was largely responsible for the fact that he shipped more by that route than now, when Mr. Herring has a divided allegiance. (Folio 2270.) At that time Mr. Choate and Mr. Lothrop, Union Pacific agents, solicited his business by the Union Pacific. (Folio 2271.)

Mr. McGrew, in charge of the traffic of the Standard Underground Cable Co., manufacturing wire and cable for all kinds of electrical service, shipping all over the country, testified that Mr. Choate and Mr. Herring were soliciting business in competition with each other when the agencies were separate, and when Mr. Herring secured the business he routed it by New Orleans. (Folio 2281.)

Mr. Gano, of Cincinnati, from 1892 to 1894 Freight So-

licitor of the Union Pacific in that city, testified that the Southern Pacific was then represented by Mr. W. H. Connor, now the joint agent of both lines. He further testified:

"Q. During the time when you were with the Union Pacific was there any competition between that company and the Southern Pacific for transcontinental business?

A. Decidedly.

Q. To what points was that competition directed, that is, to what coast points?

A. All the Pacific coast.

Q. How far north?

A. Portland, Seattle, Tacoma and Puget Sound points.

Q. And all the California points?

A. And all the California points.

Q. What way was the Southern Pacific working transcontinental business?

A. Via New Orleans and El Paso.

Q. And which way did the Union Pacific work business?

A. Through Missouri River, Council Bluffs, Kansas City, Omaha and Ogden.

Q. Which way was the Portland business worked by the Southern Pacific?

A. Why, that had two routes; they had a steamship route from San Francisco to Portland, and they had an all rail route by what they called the Shasta line from Sacramento to Portland.

Q. How did the business move to reach the Sacramento route?

A. Via New Orleans, when the Southern Pacific secured the business.

* * * * * *

Q. And how did the Union Pacific work Portland business?

A. By the Oregon Railway & Navigation Co.

Q. Was there any competition at that time for passenger business to the coast?

A. There was.

Q. Active or otherwise?

A. Very active.

* * * * * *

Q. How did they work to get the business?

A. By personal solicitation. People that they heard were going to the Pacific coast, their representatives, passenger men, would go to see them.

Q. That is, the Southern Pacific?

A. Both the Southern Pacific and Union Pacific had passenger men in the territory.

* * * * * *

Q. Which way did they endeavor to send the coast business?

A. Who endeavor to send?

Q. The Southern Pacific.

A. Via New Orleans."

(Folios 2299 to 2301.)

At Folios 2302 and 2303 Mr. Gano gave the list of men working for these respective agencies. Mr. Gano also testified (Folio 2314) that passenger business was worked to San Francisco by way of Portland and the boat line. In working for passenger business, he said (Folio 2316) that the Southern Pacific would take advantage of the Union Pacific and say it was a slow route in winter time, and the Union Pacific would talk about the sand blasts and sand storms in the south during the summer time. He further said that both the Southern Pacific and Union Pacific overland route had publications showing the beauties of the lines. These were folders, newspaper advertisements and periodical advertisements. The effort of the solicitors for the Southern Pacific was to send passengers, if they could, via the Sunset Route, and that of the Union Pacific to send them by the Ogden Route. (Folio 2317.)

Mr. Williamson, for five years Commissioner of the Re-

ceivers' & Shippers' Association of Cincinnati, formerly connected with the traffic department of the Queen & Crescent Route, said (Folios 2323-4) that the Southern Pacific and Union Pacific were in competition for business out of Cincinnati territory prior to 1901, the Southern Pacific endeavoring to route the traffic by New Orleans. The Queen & Crescent, with which Mr. Williamson was connected participated in that business. Most of the business was to California, but some shipments were handled to Tacoma and Portland. The Union Pacific was moving that business through Ogden for California, and over their own line to Portland. Competition was very active. At Folio 2327 he said that the Queen & Crescent worked exclusively with the Southern Pacific, and the principal competitor of that route was the Union Pacific.

Mr. Buchanan, Traffic Manager of the great soap manufacturing company of Proctor & Gamble, manufacturers of Ivory Soap and other products, who was formerly Assistant General Freight Agent of the Big Four Railroad at Cincinnati, testified that previous to 1901 the Union Pacific and Southern Pacific were competing for Pacific Coast business out of the Cincinnati territory, the Union Pacific working business via Ogden, and the Southern Pacific via New Orleans preferably, and also El Paso. (Folio 2338.)

Mr. Keavy, Commissioner of the Indianapolis Freight Bureau since 1906, and previous to that time in the Freight Traffic Department of various railroads from 1872 on, said that Indianapolis was within Mr. Connor's jurisdiction, when he represented the Southern Pacific Co. alone, and that the Union Pacific Co. had separate representation in that field. He then testified:

"Q. What was the fact as to whether there was competition for transcontinental business between the Southern Pacific and Union Pacific prior to 1901 in that district?

A. It was quite well understood that there was that competition between those two routes; in other words, when dealing with the representative of the Southern Pacific it was known that you were treating with a rival of the Union Pacific, and vice versa.

Q. Which way did the Southern Pacific agents, Mr. Connor and his subordinates, endeavor to route their transcontinental traffic?

A. Via New Orleans.

Q. And the Union Pacific?

A. By the Missouri River gateway." (Folios 2372-3.)

On cross-examination, at Folio 2375, he stated that the territory in which he observed this competition was Indiana. He then testified as to the connecting lines running to New Orleans and Chicago respectively, which participated in this competition in connection with the transcontinental line representatives. (Folios 2376-2377.)

Mr. McDowell, Traffic Manager of the Atlas Engine Works, one of the largest, if not the largest, institution of the kind in the country, with shipments all over the United States, testified that previous to the amalgamation of the Southern Pacific and Union Pacific the two systems were soliciting business against each other, Mr. Connor and his subordinates endeavoring to route the traffic by New Orleans, and the Union Pacific by Missouri River gateway. (Folios 2382-3.)

Mr. Bean, in charge of traffic of the Thomas Manufacturing Co., manufacturers of farm machinery at Springfield,

Ohio, and shipping to all parts of the United States, testified that he knew Mr. Connor, when he represented only the Southern Pacific, and that he endeavored to route Pacific Coast traffic by New Orleans; that the Union Pacific had a soliciting agency in the field at that time endeavoring to route their traffic through the Missouri River gateways. He then said:

> "Q. How was the competition between Mr. Connor and his agency and the Union Pacific for this coast traffic, was it active or otherwise?
>
> A. It seemed to be quite aggressive, particularly on Mr. Connor's part.
>
> Q. Particularly on Mr. Connor's part?
>
> A. Yes sir, the other side as well, I may add they were both aggressive in the business." (Folio 2390.)

Mr. Mayer, for fifteen years in charge of the traffic of the Mosler Safe Co. of Hamilton, Ohio, which with the Diebolds are the largest manufacturers of safes, vaults and deposit boxes in the country, testified that when Mr. Connor represented the Southern Pacific, and the Union Pacific had a separate agency, the Mosler Company's business was solicited by New Orelans by the Southern Pacific, and by the Missouri River gateway by the Union Pacific, and he stated that the competition between those two companies at that time was very active. (Folio 2399.)

Mr. Smith, now in the mill and factory supply business at Cincinnati, and for fifteen years prior to 1900 Traveling Freight and Passenger Agent of the Union Pacific, traveling through Ohio, Indiana, Kentucky, part of Pennsylvania and West Virginia, soliciting business from shippers, testified that there was competition at that time between the

Southern Pacific and the Union Pacific, as well as the Santa Fe for transcontinental business; that the Southern Pacific agency at Cincinnati endeavored to move transcontinental business via New Orleans and El Paso, while he endeavored to route it via the Union Pacific. (Folio 2412.) The competition between the Southern Pacific agency trying to work the business via New Orleans, and his agency via Omaha was quite active. (Folio 2413.) He remembers a rate war on this class of business, when he had a minimum of 50 cents a hundred from Chicago or the Mississippi River to work on, covering business to San Francisco; that at that time everybody was out scrapping for business at any price they could get, and the Sunset Route participated in that war This was before the Interstate Commerce law was enacted. (Folios 2413-14.) When the two lines were in competition, they advertised to get passenger business. The Southern Pacific principally advertised through tourist sleeping cars from Cincinnati by way of New Orleans; the Union Pacific the same equipment from Chicago in connection with the Northwestern. (Folio 2416.) He also said, at Folio 2417, that he could not recall that the Southern Pacific advertised the Ogden Route, but remembered that they did advertise the Shasta Route and the route via New Orleans.

Mr. Blair, Secretary of the Niles Tool Works Co., manufacturing machine tools and heavy machinery at Hamilton, Ohio, shipping to all parts of the United States, testified that previous to the amalgamation of the agencies in Cincinnati, there was an active competition between the two agencies for Pacific Coast business; that Mr. Connor and his subordinates tried to route traffic by New Orleans and Mr. Welch, the Union Pacific agent, and his subordinates

by way of Omaha; that his company shipped both ways. (Folio 2421.)

Mr. Gothlin, Railroad Commissioner of Ohio, and for many years in the traffic business either with railroads or the National Cash Register Co., testified that he knew the Southern Pacific and Union Pacific representatives when they were separate, and was asked:

> "Q. What was the fact as to whether the Union Pacific and Southern Pacific were competing with each other for coast business prior to 1901?
>
> A. I never had any doubt as to that; that was always my impression judging from my interviews with their representatives.
>
> Q. Did the Union Pacific agents and the Southern Pacific agents both call on you and solicit business?
>
> A. Yes sir."

He stated that the Southern Pacific endeavor was to secure business by New Orleans and the Union Pacific by Omaha. He had previously stated that the bulk of the National Cash Register business to San Francisco moved by New Orleans, and was asked the reason for that. He said:

> "A. Well, there were several reasons. One was, in my experience, that we generally got better service for less than carload freight. Ours was less than carload freight. For a large part of the time there was a package car from Cincinnati through to San Francisco. I do not just recall how long that was on, but for quite a long time, which was an advantage for less than carload shipments.
>
> Q. Just explain what a package car is, Mr. Gothlin.
>
> A. The Southern Pacific, in connection with the Queen & Crescent, ran one or more cars daily,

loaded with less than carload freight through from Cincinnati to Frisco, via New Orleans. That was one of the arguments and a very good argument, used by the Southern Pacific for securing less than carload freight for San Francisco.

Q. How frequently did the National Cash Register Co. ship to San Francisco?

A. Practically daily. The shipments were of various sizes. Their shipments were not large in themselves, but in aggregate they amounted to quite a good deal.

Q. Were there any other reasons for giving the business to the Southern Pacific aside from the fact that they had this package car?

A. Yes sir. I was personally acquainted with Mr. Connor. I had known him for a number of years. Furthermore, he rendered myself and the company I was working for favors on several occasions, which were perfectly legitimate and yet they were favors which we recognized." (Folios 2431-2.)

Mr. Gothlin was formerly a representative of the Wisconsin Central in Ohio and Pennsylvania territory, and he gave instances of active competition on large shipments, as in Folios 2439-40 he said the Union Pacific and Southern Pacific agencies and his own agency in connection with the Northern Pacific were working for months endeavoring to route a lighthouse, which was a very large shipment, from Mt. Vernon to Astoria, which he secured. At Folio 2440 he spoke of a steel bridge shipped from Massillon, Ohio, to a point in Oregon south of Portland, and he stated that it was his impression that all the agencies were after that, and it was secured by the Louisville & Nashville and Southern Pacific.

On cross-examination defendants' counsel endeavored to develop that this was some point on the Southern Pacific

in Oregon, but he stated that the Northern Pacific took freight for points south of Portland in Oregon, based on the Portland rate plus an arbitrary. (Folio 2457.) This was, of course, a competition equally open to the Union Pacific. Again, on cross-examination, at Folio 2461, he was asked if Mr. Connor in soliciting traffic, if he was unable to get it by way of New Orleans, did not ask for it by way of El Paso or Ogden, and stated that he did not recall that he ever asked him for business by any other route than by New Orleans.

Mr. Rheinstrom, who shipped distilled liquors to California, and fruits from California to Cincinnati, testified that when the Union Pacific and Southern Pacific had separate soliciting agencies in Cincinnati, they were actively competing with each other. (Folio 2478.)

Mr. McGuffey, in the freight department of the Proctor & Gamble Co. at Cincinnati, and formerly in the general freight department of the Queen & Crescent, testified that before the consolidation of the agencies, the Union Pacific and Southern Pacific were actively competing with each other for California business; that occasionally shipments were secured by the Queen & Crescent and Southern Pacific for Portland. (Folio 2486.) He further testified on cross-examination, that his experience has been that the lines leading directly from Cincinnati do not solicit coast business with anything like the activity that the western lines do, and that by the western lines he meant the Santa Fe, the Union Pacific and the Southern Pacific. (Folio 2491.)

Mr. Shewalter, for many years in charge of the traffic of Mass, Foos & Co., manufacturers of windmills, iron

pumps and lawn mowers, at Springfield, Ohio, one of the principal manufacturers of goods of that class in the country, testified that the representatives of the Union Pacific and Southern Pacific agencies separately solicited his business before the agencies were consolidated, in competition with each other, and that he would say that the competition was quite active. (Folio 2499.) That the solicitation of the Southern Pacific was by way of New Orleans, and sometimes by El Paso, but he could not remember that they ever solicited by Ogden. (Folio 2501.)

Mr. Cory, in charge of the traffic of James Leffel & Co., Springfield, manufacturers of water wheels, steam engines, and boilers, in the water wheel department, probably as large as any concern in the United States, testified that Mr. Connor and his representatives and the Union Pacific and its representatives were actively competing with each other for business when the agencies were separate. (Folio 2503.) That Mr. Connor and his representatives never solicited shipments by way of Ogden. (Folio 2505.)

Mr. Marshall. Traffic Manager of the Pioneer Pole & Shaft Co., of Piqua, Ohio, the largest manufacturer of buggy poles and shafts in the country, transacting from 50% to 60% of the entire business in the country, testified that when the Southern Pacific and Union Pacific had separate agencies in Cincinnati, the Southern Pacific endeavored to route business by New Orleans, and the Union Pacific by way of Omaha, and the competition was active. (Folios 2507-8.)

Mr. Vosmer, who is connected with the Globe-Wernicke Co., manufacturers of sectional bookcases, sectional filing

cabinets, and general office equipment (being the largest of its kind in the world, as stated by Mr. Blum, another witness, at Folio 2513), testified that when the Union Pacific and Southern Pacific had separate soliciting agencies in Cincinnati, those agencies solicited the business of the Globe-Wernicke Co., in competition, Mr. Connor and his subordinates endeavoring to route the traffic to the coast always by way of New Orleans. (Folios 2517-18.)

Mr. Doyle, for sixteen years in charge of traffic of the Fay & Egan Co., one of the largest manufacturers of woodworking machinery for furniture factories, etc., in the world, and shipping to all parts of the country, testified that when the Union Pacific and Southern Pacific had separate agencies in Cincinnati, his traffic was solicited by them, the Southern Pacific endeavoring to route the traffic by the New Orleans route, and the Union Pacific by the Omaha, and that the competition was very active. (Folios 2525-6.) In correcting an inadvertent remark made on cross-examination, he said that Mr. Connor always tried to work the business by New Orleans. (Folio 2531.)

Mr. Pursel, in charge of the freight traffic of the Armdeler Wagon Works, Cincinnati, and previous to three years ago with the Frank J. Enger Carriage Co. of Cincinnati, testified that he knew the agents of the Southern Pacific and Union Pacific when the agencies were separate, and that in those days the two lines were competing for Pacific Coast business, and he would consider the competition active. (Folio 2538.) He further testified that the matter of equipment was of importance to shippers of vehicles, and that business was diverted from one line to another by reason of such line being able to furnish equipment superior

to the other, and that the Union Pacific was the first to have a large vehicle car, which resulted in taking business away from the other lines and giving it to them. (Folios 2538-2539.)

Mr. Berndt, Traffic Manager of the Andrew Jergens Co., manufacturers of toilet soaps, perfumes, talcum powders, Florida water, etc., a large concern in Cincinnati, testified that when the Union Pacific and Southern Pacific had separate agencies his business was solicited by them respectively in competition with each other. (Folio 2542.)

Mr. Freiberg, a distiller at Cincinnati, testified that the Union Pacific and Southern Pacific agencies were actively competing for business to the coast when they were separate, and that traffic moved by all routes to San Francisco, including the New Orleans route. (Folios 2548-9.)

Mr. Coakley, Division Freight Agent of the American Steel & Wire Co. at Cleveland, in charge of their traffic, and employed by that company since June, 1901, either at Cleveland or Pittsburg, previous to that with different railroad companies, including the Queen & Crescent, which worked with the Southern Pacific agency for transcontinental traffic, testified that when the Southern Pacific and Union Pacific had separate agencies in Pittsburg, they were competing with each other for transcontinental business, the Southern Pacific endeavoring to route its traffic by New Orleans or by El Paso, and the Union Pacific by way of Omaha, and that the competition between those agencies was active. (Folios 2554-5.)

Mr. Boltz, of Cleveland, Traffic Manager of the Na-

tional Petroleum Association for the last three years, and previous to seven years ago in the railroad service of various lines, including the Milwaukee & St. Paul for eleven years, from 1887 to 1898, and in 1899 becoming the General Agent at Cleveland of the Iowa Central, said that previous to the consolidation of the Southern Pacific and Union Pacific agencies he was acquainted with the gentlemen representing those respective lines in that territory, and named them. He testified, at Folio 2569:

> "Q. How was this competition between the Union Pacific and the Southern Pacific as to being active or otherwise?
>
> A. It was extremely active in those days.
>
> Q. In what way did their activity show itself?
>
> A. Well, the representatives of the Union and the Southern Pacific lines were actively engaged as competitors in securing as much business as possible for their respective lines, and the Union Pacific endeavored to handle their business in connection with the lines via the Missouri River gateways, whereas the Southern Pacific handled almost their entire business via the New Orleans gateway."

He further said that as agent of the Chicago, Milwaukee & St. Paul, he frequently ran up against competition of the Southern Pacific for that business. (Folio 2570.) At Folio 2578, on cross-examination, he testified that the Union Pacific was the natural connection of the Chicago, Milwaukee & St. Paul, and that he worked very closely with that line

Mr. Ryan, of Toledo, is in charge of the traffic of the National Supply Co., one of the largest manufacturers of oil and gas well supplies in the country, the business of which he describes as follows (Folio 2605):

"We manufacture oil and gas well supplies, except the pipe that produces the oil from the ground. The pipe, we are agents for the National Tube Co. But boilers, machinery, cordage, valves, and fitting we manufacture ourselves at our own factory, and ship from our own factory to our warehouses and stores in the Southern California oil fields. We have eight or nine warehouses in Southern California."

He also said they manufactured tanks. He knew the representatives of the Southern Pacific and Union Pacific in the Toledo district when they had separate representatives, and says they were competing with each other for coast business actively, the Southern Pacific endeavoring to route the coast traffic by New Orleans and the Sunset Route, and the Union Pacific via Omaha. (Folios 2606-7.)

Mr. Kleuter, of Toledo, in charge of the traffic department of the Gendron Wheel Co., a large concern shipping its product all over the world, testified that when the Southern Pacific and Union Pacific had separate commercial agencies in that field, both of those agencies solicited his traffic, the Southern Pacific endeavoring to route it via New Orleans, and the Union Pacific by the Missouri River. (Folio 2621.)

Mr. Rand, now employed in the Lake Shore local freight office at Cleveland, and in 1889 and 1890 freight solicitor in Cleveland for the Union Pacific, testified that at that time the Southern Pacific was endeavoring to work business by the New Orleans gateway, that the competition between the Union Pacific and Southern Pacific for California business was very active, and that the strongest competitor the Union Pacific had was the Southern Pacific. (Folio 2627.)

Mr. Longacre, Traffic Manager of the Atlantic Terminal Line, which is an association of several manufacturers whose freight business he handles at Cleveland, was in the railway service from 1895 to 1901, with the Erie Railroad, the last three years Division Freight Agent at Meadville, Pa. While connected with the Erie, he was familiar with the movement of transcontinental traffic. He testified that the Southern Pacific and the Union Pacific agencies out of Pittsburg were competing with each other very actively in his territory, the Southern Pacific endeavoring to move business via Cincinnati and New Orleans, and the Sunset Route and the Union Pacific by the Missouri River. (Folios 2634-5.)

Mr. Henderson, Traffic Manager for the last fifteen years of the White Sewing Machine Co., at Cleveland, shipping its product all over the world, testified that he remembered when the Union Pacific and Southern Pacific had separate agencies soliciting traffic in that territory; that the Southern Pacific agent endeavored to route traffic to the coast by New Orleans, and that he was successful to a certain extent in doing so. The Union Pacific endeavored to move traffic via Omaha, and the competition between the Union Pacific and the Southern Pacific for coast business was very active. (Folios 2638-2639.)

Mr. Rushforth, in charge of the traffic of the W. S. Tyler Co. manufacturing all kinds of wire screen, states that at the time the Union Pacific and Southern Pacific had separate agencies in the Cleveland territory, the Southern Pacific were trying to route the traffic by New Orleans and succeeded in routing business that way, and the Union Pacific by the Missouri River. (Folios 2645-6.)

Mr. Gordon, Traffic Manager of the Anderson Carriage Co. for the last seven years, previous to that contracting freight agent for the Michigan Central Railroad Co. in Detroit for several years, remembered when the Union Pacific and Southern Pacific had separate representatives in that territory, and gave their names. The Southern Pacific was endeavoring to route traffic to the coast by New Orleans, and the Union Pacific by Omaha. (Folios 2654-5.) This shows the intensity of this competition, as the Southern Pacific was in the field as far north as Detroit, endeavoring to take traffic down by New Orleans and to the Pacific Coast.

Mr. Evans, now Traffic Manager of the Sherwin & Williams Co., manufacturers of paints, varnish and linseed oil at Cleveland, formerly in the transportation service in that city, testified to the names of the representatives of the Union Pacific and Southern Pacific when they were separately represented in Cleveland, and stated that in those days the Southern Pacific endeavored to route their traffic to the coast by way of New Orleans, and the Union Pacific by the Missouri River. (Folio 2661.)

Mr. Hart, Traffic Manager of the Gresselli Chemical Co., chemists, at Cleveland, and shipping to all points of the United States, with plants at Cleveland, Chicago, Cordaville, N. Y., Birmingham, Beaver Falls, Titusville and Park City, testified that they shipped mostly to the Pacific Coast from Chicago, also occasional coast shipments from Cleveland; that when the Union Pacific and Southern Pacific had separate agencies in the Cleveland territory, the Southern Pacific endeavored to route the business through New Orleans, and the Union Pacific through Omaha to Ogden.

and in those days his traffic moved both ways, about evenly divided. (Folios 2666-7.)

Mr. Wilkison, Treasurer of the Chandler & Price Co., of Cleveland, manufacturing printing presses and printing machinery, shipping their product all over the world, recalled that when the Southern Pacific and Union Pacific had separate agents in that territory who called on him for business, that the Southern Pacific agency endeavored to route traffic to the coast via New Orleans, and the Union Pacific by Omaha. (Folios 2672-3.)

The route from Chicago to California by way of New Orleans is a very roundabout route, and the fact that any traffic moved by that route or was competed for by that route only emphasizes the strenuous character of the competition that formerly existed between the Southern Pacific and the Union Pacific. This strife for business between those systems permeated all their agency force to such an extent that supreme efforts were made by the Southern Pacific to move business even by a roundabout route, in order to get the haul and keep it away from the Union Pacific. When it was not possible to get the business by New Orleans, their next effort was to get it by El Paso.

Mr. Wentz, Commercial Agent of the Rock Island in Chicago for fifteen years, up to 1908, in close contact with the traffic situation there, testified that the Southern Pacific by way of New Orleans reached Chicago over the Illinois Central, and that route was actively worked for business both ways, and he felt it in his business as the representative of the Rock Island. (Folio 2833.)

He again testified:

"Q. Do you have any recollection of a fast freight train run by the Illinois Central to New Orleans on which coast business moved?

A. Why, I remember that in the soliciting of business they used that as an inducement to ship that way. I forget now whether it was the Union Pacific solicitors that especially mentioned that, or the Illinois Central.

Q. You mean the Southern Pacific?

A. I mean the Southern Pacific, yes sir.

* * * * * *

Q. What class of commodities moved to the coast by these different routes from Chicago territory? All classes?

A. All classes I should say. I remember especially one time some large shipments of furniture that were moving, and if I remember right, we lost those shipments or some of them. Some furniture shipments I recall one of my solicitors reporting to me that he could not get; they were pledged to the Southern Pacific." (Folio 2835.)

On cross-examination defendants' counsel secured the following information (Folios 2842-3):

"Q. Well, isn't it true that you never knew any solicitation by the Southern Pacific in this territory by way of New Orleans? I am not asking whether they had refused business that way, but isn't it true that they did not solicit it that way?

A. I was under the impression that they did solicit it. That is my recollection.

* * * * * *

Q. Whom do you recall as soliciting from this territory by way of New Orleans?

A. The Southern Pacific representatives.

Q. Who?

A. Mr. Niemyer and his assistants.
Q. As soliciting by way of New Orleans?
A. I think they were."

He further testified that the Rio Grande handled business in connection with the Rock Island and the Shasta Route to Portland

"Q. Were the Southern Pacific representatives here in the field for Portland endeavoring to secure the routing of business by the Shasta Route in connection with the lines leading east from Ogden?
A. Yes, sir. That is my recollection." (Folios 2846-7.)

And again he gave the following testimony at Folio 2849:

"Q. Judge Lovett has asked you whether the Pacific coast business that was solicited by way of New Orleans by the Southern Pacific was not destined to Los Angeles. Was the Union Pacific soliciting business at Los Angeles?
A. Yes sir.
Q. Actively, weren't they?
A. Oh yes, they had a route to Los Angeles by way of Sacramento." (Folio 2849.)

Mr. Morse, now in private business at Chicago, formerly in the railroad service with the Burlington, from 1870 to 1877, at Omaha as General Agent, then ten years with the Union Pacific at Chicago and Omaha, after that with the Missouri Pacific up to 1906, gave a list of the various officials representing the Southern Pacific and Union Pacific in Chicago at different times, and then testified (Folio 2857):

"Q. During the days when you were familiar with the conditions here, previous to the time the

two offices were united—the Southern Pacific and the Union Pacific—which way was the Southern Pacific working its coast business, as far as it could?

A. By way of El Paso.

Q. Did you know of any business being worked by the Southern Pacific by way of New Orleans?

A. Yes sir.

Q. When was that?

A. That was almost from my first coming here for the Missouri Pacific many years ago."

He then explained that when he spoke of working by way of El Paso he treated that as the converging point, meaning by way of New Orleans, or any other junction points between El Paso and New Orleans, but that they worked the southern route to the coast, and that they worked their business by way of New Orleans with the Illinois Central. He further testified, at Folio 2858:

"Q. Was the solicitation of business here as between the Union Pacific agency on the one hand, and the Southern Pacific on the other, an active solicitation?

A. Yes sir.

Q. Active competition?

A. Yes sir.

Q. And did that continue up to the time of the amalgamation of the offices?

A. Yes sir."

On cross-examination it developed that his best opportunity for observing their relations was after 1887, when he was moving coast business over the Missouri Pacific, soliciting freight for California, both by way of Ogden and El Paso. He then testified (Folios 2861-2):

"Q. And did I understand you to testify that the Southern Pacific prior to 1901 solicited business by way of New Orleans rather than by way of El Paso or Ogden from this territory?

A. Yes sir.

Q. Is that of your own knowledge, Mr. Morse, or is it an impression that you have?

A. My own knowledge.

Q. Your own knowledge. Who solicited it?

A. Through Mr. Niemyer and his agency; we were co-operating with them and were doing business with them.

Q. Moving it by way of New Orleans?

A. By way of Texarkana and El Paso.

* * * * *

Q. Well, I understood you to testify in answer to Mr. Severance that when you said El Paso you meant New Orleans?

A. Well, when I spoke of El Paso, I spoke of El Paso as the converging point. The Illinois Central worked their business for the coast by way of New Orleans, but we had no connection at New Orleans at that time.

Q. All of your business for the coast was worked by way of El Paso or by way of Denver?

Q. By way of Texarkana and El Paso, or by way of Pueblo and Ogden.

Q. And you worked with Mr. Niemyer for California business by way of El Paso and Pueblo?

A. No, not with Mr. Niemyer by way of Pueblo. With Mr. Niemyer by way of Texarkana and El Paso.

Q. You never worked with him by way of Pueblo?

* * * * *

A. No, he had no routes that way at that time.

Q. Hadn't he, from Ogden ?

A. Business wasn't solicited that way by his agency."

It appeared on re-direct examination that Mr. Morse was, from 1880 to 1887, the General Passenger Agent of the Union Pacific at Omaha, and he testified as follows, at Folio 2871:

"Q. Now, take passenger traffic moving to California points from the east, from New York and the central territory, Cincinnati and that region, was there any competition between the New Orleans route and these routes through here at that time?

A. Oh yes, there was.

Q. On passenger business?

A. Yes, sir.

Q. That is, between the New Orleans route on the one hand, and the Union Pacific and Santa Fe on the other?

A. Yes sir."

On re-cross-examination, he explained in answer to counsel for the defendants:

"A. The Southern Pacific, by way of New Orleans, solicited business at eastern points by way of New Orleans, and at that time the Galveston, Harrisburg and San Antonio, and the Southern Pacific at El Paso. I do not know that they were consolidated at that time, but they solicited passenger business in the east at that time, and obtained a large amount of business, and especially the emigrant business.

Q. When was that?

A. That was in 1883 and 1884 and subsequently.

Q. 1883 and 1884 and subsequently. And what was the competing business that you spoke of then —the Union Pacific competing with that?

A. The Union Pacific, and at that time, the Central Pacific.

* * * * *

Q. Where was that business going to—San Francisco or Southern California?

A. Well, to various points in California. We were all trying to populate California, and took it to all points." (Folios 2872-3.)

Mr. Philipp, who in 1891 represented the Union Pacific Railroad in Milwaukee, testified that even from that point some traffic moved to the coast over the Illinois Central by way of New Orleans, also considerable freight moved by El Paso, and that it was solicited. He also knew of some shipments moving to Portland by the Shasta Route through Ogden, and also through El Paso, although it was a round-about route. (Folios 2906-7.)

On cross-examination it appeared that traffic moved by New Orleans in the winter, but through El Paso all the year around. This Milwaukee traffic was beer. (Folio 2912.)

Mr. Jilson, in charge of the traffic of the Emerson Manufacturing Co., of Rockford, Ill., a large concern manufacturing agricultural implements, testified that when the Union Pacific and Southern Pacific were separate their traffic to the coast was routed by the consignees in California, and that some of it moved by New Orleans by the Southern Pacific, and some of it by El Paso, the efforts of the Chicago agencies of the separate lines being to see that the routings specified on the coast were respected. (Folios 2915-18.)

Mr. Jones, wholesale groceryman in Peoria, shipped east from California points, such as San Francisco, Fresno and San Jose. Their houses in California from which they shipped were on the Southern Pacific lines, and the Southern Pacific agency endeavored to move the traffic by the southern gateway, some of it by New Orleans over the Illinois Central, and a considerable amount by El Paso. The

Union Pacific men solicited this business by the Missouri River route. (Folios 2921-23.)

Mr. Younge, of Peoria, from 1900 to 1903 Traffic Manager of the Acme Harvester Co., and previous to that in the office of the Santa Fe at Pekin, Ill., was acquainted with the separate soliciting agencies of the Union Pacific and Southern Pacific in Chicago when they existed, and the Southern Pacific agent endeavored to route the California traffic of the Acme Harvester Co., by El Paso or New Orleans, the Union Pacific men by Kansas City or Omaha. (Folios 2925-6.) Counsel for defendants succeeded in bringing out from this witness that they shipped to Portland by way of Sacramento. (Folio 2929.)

Mr. Bolger, Traffic Manager of the Michigan Stove Co. at Chicago for the last four years, previous to that in the service of various railroads, including a long service for the Illinois Central as chief rate clerk and chief billing clerk, testified that he remembered when the Southern Pacific and Union Pacific had separate agencies in Chicago, and the Southern Pacific was handling its Pacific Coast business via New Orleans Sunset Route in connection with the Illinois Central, and business was actively worked that way, the Union Pacific working business by its route. The competition for coast business between the Southern Pacific by New Orleans, and the Union Pacific by Omaha, was keen. (Folios 2931-2.) He also described in detail the Illinois Central fast manifest train, No. 51, which ran from Chicago to New Orleans, and from thence the cars went on to the Pacific Coast by the Southern Pacific. This train went out of Chicago every day, sometimes in several sections, and the cars for the coast went through without

unloading. The train had the right of way over everything except passenger trains. (Folios 2932-3.) At Folio 2940, on cross-examination, he was asked if the New Orleans route was the only way the Southern Pacific was soliciting California business, and replied:

> "A. It is the only way I know of.
> Q. Didn't they try to get it by way of El Paso?
> A. I don't remember a car moving that way.
> Q. I am asking you about the solicitation. Didn't they attempt to solicit it by way of El Paso?
> A. The only time I would see their men would be to get the volume of business moving via New Orleans." (Folio 2940.)

Again, in response to counsel for defendants, Mr. Bolger testified as to the Southern Pacific solicitors coming to him at Fordham Yards in Chicago, and asking for any unrouted business coming in by the Nickel Plate or the Belt Line by way of New Orleans, and counsel for the defendants then secured the following very significant testimony, (Folio 2951):

> "Q. Now mind you, I am not asking about cases where they worked with the Illinois Central agent to help him control business that he had secured, but business where they solicited independently of the shipper.
> A. Yes, I would call that soliciting both from shippers and railroad men.
> Q. You would call that soliciting both from shippers and from railroad men?
> A. Yes. And then there were industries on the Belt, close, that I knew they were going to for Southern Pacific.
> Q. Going to industries located on what?
> A. On the Belt railway of Chicago.
> Q. And soliciting from them?

A. Yes sir.

Q. For California by way of New Orleans?

A. Yes, sir.

Q. Do you know any of those shippers or industries?

A. I can't recall now, because they were scattered from Burnside to Stockyards."

On re-direct examination (Folio 2952), he testified:

"Q. I believe you stated in answer to Judge Lovett, in his endeavor to accentuate your testimony in this regard, that you were acquainted with a good many shippers in the town and the representatives of shippers, did you not?

A. Yes sir.

Q. And you were familiar with the movement of traffic at that time, it was part of your business to keep track of it?

A. Yes, that was.

Q. And from your general knowledge of the situation and from statements made to you by representatives of shippers and by shippers, you know that the Southern Pacific was endeavoring to work coast business by New Orleans at that time?

A. Yes sir. That was, of course, Illinois Central and Southern Pacific."

Mr. Montgomery, Traffic Manager of the International Harvester Co. since it was organized in 1902, previous to that with the McCormick Harvester Machine Co., testified that he was acquainted with the Union Pacific and Southern Pacific when they had separate soliciting agencies in Chicago. Mr. Niemyer, the Southern Pacific agent, tried to route his traffic to the coast as a general thing, by the long haul through the Texas gateways. The Southern Pacific might get the traffic at a number of points in Texas; the Houston & Texas Central junctions with the Santa Fe;

the Rock Island-Frisco, Fort Worth, Dallas, Sherman, and then further down the state, and at some of the other crossings. The Union Pacific was soliciting business through Omaha and Kansas City. (Folio 2955-6.) At Folio 2964, Mr. Montgomery testified:

> "Q. Before the amalgamation of these agencies when Mr. Knight represented the Union Pacific and Mr. Niemyer represented the Southern Pacific, what would you say as to whether those two agencies were competing with each other for coast business?
>
> A. I should think so, yes. They did, I should say positively."

Mr. Bell, Traffic Manager of the Crane Co., manufacturers of steam fitting goods, fittings, valves, iron and brass and also jobbers, dealers in plumbing and heating goods, the largest concern in the country manufacturing these steam fitting materials, shipped to the Pacific coast from Chicago, Pittsburg, Cincinnati and Bridgeport. He stated that he knew the agents of the Southern Pacific and Union Pacific in Chicago when they were separate, and the Southern Pacific agent endeavored to route the business from Cincinnati and Pittsburg by New Orleans via the Southern Pacific, and the Union Pacific agent through the Missouri River route, and that that solicitation was active on the part of both agencies. (Folio 2969.) As to business originating on the Atlantic seaboard, the Union Pacific organization always solicited that traffic, and Mr. Niemyer, representing the Southern Pacific solicited it by way of the Morgan line and the Sunset Route of the Southern Pacific. (Folio 2973.)

On cross-examination he says that the traffic still moves from Pittsburg, Cincinnati and the east by way of New

Orleans, and a very little of the Chicago business by New Orleans. (Folio 2975.) Prior to the amalgamation Mr. Niemyer solicited business from Chicago territory to Portland via Ogden and the Shasta route. When the O. R. & N. was a part of the Union Pacific system, the Union Pacific agency solicited in connection with the Short Line and the O. R. & N. (Folio 2972.) On cross-examination he testified that some of their business moved to Portland by the Shasta Route in former days. (Folio 2977.)

Mr. Ginz, of South Bend, Indiana, formerly Traffic Manager of the South Bend Chilled Plow Co., a large manufacturer of plows, harrows and cultivators, selling in all parts of the country, testified that he remembered when the Southern Pacific and Union Pacific had separate soliciting representatives coming from Chicago; that the Southern Pacific representative endeavored to route his business to the coast via the Illinois Central to New Orleans, Southern Pacific from there to the coast, and the Union Pacific endeavored to route it over any of the lines from Chicago to the Union Pacific, and thence over that line to Ogden. He further testified as follows:

"Q. How energetically did these gentlemen work for that business? Was it an active competition for the business, or otherwise?

A. They were very anxious to get all they could.

Q. By those respective routes?

A. Yes sir.

Q. What means did they take to get that business?

A. They used every effort they could to get it.

Q. What efforts, in what way?

A. I don't remember just what he did say, but at one time they were willing to pay for it.

Q. Those were in the old wicked days, were they?

A. Yes sir.

Q. Outside of this time when they were willing to pay for it, what efforts did they make to get the business?

A. They used different arguments, as to the time they could make, and after that time that is about the only inducement they could offer for business."

Previous to 1901 they tried to divide their business equally between the Southern Pacific at New Orleans and the Santa Fe, and the Union Pacific at Ogden. (Folios 2084-5.) He further testified on cross-examination, as follows:

"Q. Did the Union Pacific and Southern Pacific men ever call on you together, Mr. Ginz?

A. I think not.

Q. Did the Southern Pacific ever call with any other agent, or always alone?

A. I think the Southern Pacific man usually came with the man representing the Illinois Central.

Q. Did he ever work with any of the lines leading westerly?

A. I do not remember that he did; but in calling on us there I think probably half the time that he came, he came with the Illinois Central man." (Folio 2087.)

He further explained on cross-examination, that he did not consider the intermediate lines with reference to California business, but divided it between the Union Pacific, Southern Pacific and Atchison. He testified:

"A. Because the Southern Pacific and the Union Pacific—that business was practically all we had

that they could handle. As to the other lines, the intermediate lines, there was a good deal of business outside of the coast business that they could get a haul on which the through lines running through to the coast could not haul.

Q And your purpose was to divide your business among all lines?

A. Yes, sir." (Folio 2991.)

Mr. Millhouse, of South Bend, manufacturer of asphalt roofing for eight years, for three years previously Traffic Manager for the Studebaker Manufacturing Co., and previous to that commercial agent for the Santa Fe Co. at Peoria, Ill., testified that when he was with the Santa Fe, his territory covered Northern Indiana and Northern Illinois, and that he was working coast business; that the Southern Pacific was represented in that territory, working coast business too, and that they endeavored to route the business by way of New Orleans. The Union Pacific was represented in the same territory trying to work the business via Omaha; that the traffic moving west which was the subject of the solicitation of the Santa Fe, the Southern Pacific and Union Pacific agencies, consisted of agricultural implements largely, and furniture. Also eastbound, canned goods, dried fruits, oranges and green fruits. (Folios 2992-3.) On cross-examination, counsel for defendants endeavored to bring out from him that the Southern Pacific and Union Pacific were working the Ogden route in competition with the Santa Fe; but on re-direct examination, he testified that it was the Union Pacific solicitor who was working business by that route, and the Southern Pacific solicitor by the Sunset Route; that he was working business for the Santa Fe route, and that all three were competing with each other for business both eastbound and westbound. (Folio 2995.)

Mr. Holderness, of Kenosha, Wis., shipping clerk of the Bain Wagon Co., remembers when the Union Pacific and Southern Pacific were separately represented. The Union Pacific representative called on him, soliciting business, and the Illinois Central representative solicited business for the coast by the New Orleans gateway in connection with the Southern Pacific. (Folios 2999-3000.)

On cross-examination he testified that some of the shipments went to California by way of New Orleans. Counsel for defendants questioned this, saying that he was informed that no rates ever applied that way, and in response to his question, Mr. Holderness said:

> "A. Well, previous to the merger, I say we have shipped that way." (Folios 3002-3.)

Mr. Knight, for many years in the railroad service, and from the first of December, 1888, until the first of September, 1901, General Agent of the Union Pacific at Chicago in charge of freight and passenger business, testified that his territory extended east as far as Erie, Pa., and generally to the east bank of the Mississippi River, and north to the north line of the United States above a line about through Indianapolis. He said that in the territory in Ohio and Indiana, he was endeavoring to send all the business he could to the coast by the Union Pacific, and then testified:

> "Q. And did you, in that territory, meet the representatives of the Southern Pacific?
>
> A. We were doing business in competition with the Southern Pacific, yes sir.
>
> Q. And who was the agent of the Southern Pacific who had charge of that territory?

A. Mr. Niemyer had charge of it, because the man at Cincinnati who nominally looked after that territory was under Mr. Niemyer's jurisdiction.

Q. Was the traffic from that territory to the coast substantial in amount?

A. Yes sir, it was quite substantial.

Q. Was the competition for it active or otherwise?

A. It was active." (Folios 3009-10.)

He then explained that as to the northern part of the territory the Southern Pacific worked more or less with the Union Pacific and the other lines, where the quick service was needed, but where it was a class of business that would stand longer service, they worked it by the southern gateway. (Folios 3010-11.) He further testified that the hop movement from Oregon points, as far as he was brought in contact with it, was by the O. R. & N. and the Short Line, and also by the Southern Pacific down to Sacramento, and thence east, the hops moving to Sacramento coming from Ogden east over the Union Pacific or the D. & R. G. (Folio 3014.) The more natural route for business from Chicago to the coast was by way of Ogden, and therefore it was, of course, the business of the Southern Pacific man not to offend the intermediate lines, and if they were caught moving a large traffic by way of New Orleans, they would apologize for it, as Mr. Knight said Mr. Niemyer did in case of a large movement of rails. (Folio 3022.) That, of course, in no way modifies the testimony of the great number of witnesses as to the effort of the Southern Pacific to move traffic by way of the south, where they could get it.

Mr. Persyn, manager of the shipping department of Sprague, Warner & Co., wholesale grocers in Chicago, one of the largest establishments in the United States, testified

that previous to the amalgamation of the two systems, Mr. Niemyer or his subordinates, solicited their orange shipments from California by way of New Orleans, claiming that the service was just as good as the Santa Fe, which line they were patronizing. This business was also solicited by the Union Pacific agency. (Folios 3085-6.)

On cross-examination it appeared that they at times moved canned goods from California to Memphis by way of the Southern Pacific and Illinois Central. (Folio 3090.) It will be recalled that Mr. Fish testified that business along the line of the Illinois Central was competitive business between the Union Pacific and Southern Pacific.

Mr. Cribben, of Cribben & Sexton Co., stove manufacturers of Chicago, in business for many years, testified that when the agencies were separate, he recalled solicitations of business by the Southern Pacific via New Orleans or Texas. The Union Pacific solicited by the other route. He remembers an occasion when Mr. Niemyer requested shipments to Portland by way of Sacramento. (Folio 3092.)

Mr. Barker, manager of the Chicago house of Jones & Laughlin Steel Co., Pittsburg, knew Mr. Knight and Mr. Niemyer when they represented the Union Pacific and Southern Pacific respectively in Chicago. They solicited his coast business, the Southern Pacific usually by way of El Paso and not by Ogden. (Folios 3114-15.)

Mr. Gallagher, contracting freight agent of the Soo Line and Canadian Pacific at Chicago, formerly chief clerk in the general freight office of the Union Pacific in Kansas City, testified that when the agencies of the Southern Pacific and Union Pacific were separate at Kansas City, traffic

moved over the Southern Pacific for California by way of their Texas junctions from Kansas City. It moved over the Frisco and the M. K. T. to Sherman and Dennison, which are junction points on the Southern Pacific, and are only about 600 miles from Kansas City. The Union Pacific were endeavoring to route the business via Ogden. (Folio 3120.) Mr. Gallagher testified to the fast train put on at one time for Portland business by way of Sacramento or Roseville Junction, and that there was competition between the Denver & Rio Grande, then working with the Oregon Short Line on the one hand, and the Union Pacific and Southern Pacific on the other. (Folio 3122.)

On cross-examination he testified that he understood the Southern Pacific were soliciting California business by way of the Texas junction at the time it had a separate agency in Kansas City. (Folio 3131.)

Mr. Richards, Traffic Manager of the American Radiator Co., and for twenty years previous to 1906 with the Illinois Central in different capacities, testified that when the Union Pacific and Southern Pacific were separate, traffic moved from Pittsburg territory, Ohio and Ohio River points, and in a small amount from Chicago to the Pacific Coast, by way of New Orleans, and during the winter months, there was a steady movement of beer from Milwaukee by that route. (Folio 3136.) He further testified that he remembered Train 51, and it ran to New Orleans in 51 hours, which was the reason it was called Train 51. This is the train that the witness Mr. Bolger spoke of, which carried a large amount of traffic. (Folio 3139.)

Mr. Wait, in charge of the freight department of Hibbard, Spencer & Bartlett Co., testified that business moved

to Portland over three different routes, first, the Ogden route and the O. R. & N., second, the Shasta route, third, the Northern Pacific and Great Northern routes, and the D. & R. G. handled some of this traffic. (Folio 3157.)

On cross-examination, he repeated that he made shipments to Portland by the Shasta Route. (Folio 3161.)

Mr. Hurlbut, Traffic Manager for the Wisconsin Pulp and Paper Mills, and formerly for many years in different capacities with the Illinois Central, from 1896 to 1900, General Freight Agent of the road, testified that some business moved from Chicago territory by the Illinois Central and Southern Pacific, but it was his recollection that there was no special effort to get that business because of the long route, but business from Cincinnati and Cleveland was solicited very strongly by his line, and they met the competition of the Missouri River gateway lines. (Folio 3173.)

Mr. Heinrichs, in charge of the traffic of P. Becker & Co., trunk and traveling bag manufacturers, shipped less than carload traffic by Illinois Central and Southern Pacific from Chicago. He testified that proper equipment was of great importance, and the road that could furnish him satisfactory equipment was apt to get the business. (Folio 3178); that when the Union Pacific and Southern Pacific had separate agencies, Mr. Niemyer solicited Portland business. (Folios 3181-2.) He moved business through the El Paso gateway and over the Shasta Route to Portland. (Folios 3187-8.)

Mr. Sage, in charge of the traffic of Fairbanks, Morse & Co., manufacturers and jobbers of gasoline engines, steam pumps, scales, windmills, etc., and formerly connected with

the Rock Island Railway in Chicago as freight solicitor, testified that he remembered at one time he had a route working business for Portland by way of the Rock Island, the D. & R. G. and the Southern Pacific. (Folios 3199-3200.) The testimony given by Mr. Stubbs, to which attention has been called in connection with the discussion of the Canadian Pacific differential, would apply to business in the interior with the same force and effect as the business from the seaboard.

Mr. Hastedt, now contracting freight agent of the Rock Island-Frisco line in Chicago, and who up to between three and four years ago always lived in St. Louis, serving in the office of the General Agent of the Union Pacific for eight years, previous to that with the Frisco in St. Louis, and who altogether has had about twenty-five years of railroad service in St. Louis, (Folios 3148-9), testified to the separate representation of the Southern Pacific and Union Pacific in St. Louis, and that the Southern Pacific worked very strongly for the El Paso route to the coast, and the Union Pacific were working business by the Missouri River gateway. (Folio 3150.)

Mr. Markham, after testifying to his long service with the Illinois Central, and that he remembered the acquisition of control by the Union Pacific of the Southern Pacific, testified as follows:

> "Q. Previous to that time, what was the attitude of the Union Pacific and the Southern Pacific toward each other, as to being competitors or otherwise, for transcontinental business?
>
> A. I should say they were competitors as all other independent lines were.

Q. For traffic originating in what territory were they competitors?

A. I should say on all traffic east of the Missouri River, and probably north of the Ohio. That is, I say in that territory it would be marked; not so marked, probably, in the territory south of the Ohio River and east of the Mississippi.

Q. For what transcontinental traffic were these lines competitors? How far north and how far south was the destination of this traffic on the Pacific Coast?

A. All the way from Portland to San Diego, I should think.

* * * * * *

Q. From your experience, which way did you find was the preferred route of the Southern Pacific from eastern territory, Atlantic seaboard territory, and say, Pittsburg, Cincinnati, and points there?

A. We found we could work it by the Southern Pacific better by New Orleans, that it was to the interest of the Illinois Central to take that business by the way of New Orleans, and they found the Southern Pacific very willing to aid them in all their traffic." (Folios 3681-2.)

He again testified, at Folio 3703:

"Q. Did traffic move east over the Southern Pacific from the Pacific coast by New Orleans and thence over the Illinois Central, when you were with that company?

A. Yes sir.

Q. What classes of traffic?

A. Fruit largely, in its season.

* * * * * *

Q. How far over the Illinois Central did that move? As far as Chicago?

A. I think we got some at Chicago; and a good deal of it would go to the eastern points via Cincinnati, Louisville, and those gateways."

Mr. Von Behren, manufacturer of vehicle wood stock, Evansville, Ind., who has been in business for thirty years, shipping his product all over the United States, testified that when the Union Pacific and Southern Pacific had separate soliciting agents, the Southern Pacific endeavored to route business to the coast by New Orleans, and that he frequently shipped by that route. The Union Pacific solicited the same business by Omaha, and he shipped that way. (Folios 3715-16.) He further stated that the Southern Pacific agent never mentioned Ogden to him or any route to the coast except New Orleans. (Folio 3720.)

Mr. Morrill, whom from 1887 to the end of 1893, was with the Southern Pacific or subsidiary lines at St. Louis, testified, (Folios 3723-4), that where the shipments were not controlled by some condition that forced them through the Missouri River, he endeavored to work his business by New Orleans, and if he could not get it by New Orleans, he had two or three routes through El Paso, or at La Grange, Texas, or Columbus, Texas. At times, where he was obliged to work with some other man and could not get a shipment by the south, he endeavored to route business by Ogden, but worked preferentially the other way. (Folio 3725.) It appeared that certain traffic located on industry tracks could not well be worked by New Orleans, but he was able to move traffic on the tracks of the Terminal Company and Belt Line by that route, and when he was working on traffic that was not on any private track, he endeavored to get the long haul by New Orleans. (Folio 3731.)

On re-direct examination, he testified at Folio 3734:

> "Q. If I understood you correctly, in answer to Judge Lovett, you said that that business was free to anybody who could get it, being on that ter-

minal line. You worked by way of New Orleans?
A. That was the unrouted business, yes sir."

At Folio 3735 he testified:

"Q. Was the Union Pacific agency, Mr. Aglar, soliciting business from that terminal line, too?
A. I imagine so, yes sir.
Q. And whatever business they secured they did not send by New Orleans, but by the Missouri River, isn't that true?
A. I would say so."
"Q. Where you found a shipment going to the Pacific coast that wasn't routed at all and you were able to get it, on the terminal line, then you sent it by New Orleans?
A. If I could control it, yes sir.
Q. Yes, if you could control it, and as to business that was where you could control it, you were competing with the Atchison and with the Union Pacific both, weren't you?
A. With all the other lines, naturally.
Q. You were competing with those two at least, weren't you?
A. Yes, sir." (Folios 3739-40.)

He answered a rather ambiguous question on re-cross examination, and to clear it up again, testified, (Folio 3741):

"Q. In the solicitation of business—independent, free business,—that could move any way and was not entangled in any of these ways you have stated you solicited that business by New Orleans, and the Union Pacific by their route? (Folio 3776.)
A. I solicited by New Orleans, yes sir.
Q. And they by their route?
A. Yes sir.
Q. And the Atchison by its route?
A. Yes sir."

Mr. Lincoln, Commissioner of the Merchants' Exchange Traffic Bureau, St. Louis, for many years in the employ of the Missouri Pacific, toward the last as General Freight Agent and Assistant Traffic Manager, testified that the Missouri Pacific had commercial agencies on the Pacific coast, and in all eastern points, and participated in Pacific coast business, and at Folio 3747 stated that their business reached San Francisco in connection with the Central Pacific, and Portland, Oregon, both by the Oregon Short Line and the Central Pacific, commonly known as the Shasta Route. He was also asked at Folios 3748-9, whether on business out of Pittsburg he met with the competition of the Sunset line of the Southern Pacific by New Orleans, and stated that he met it anywhere on and east of the Mississippi River, including St. Louis. Again, at Folio 3749:

> "Q. Did traffic move to the east from California by New Orleans as well as to the west?
>
> A. I would assume so, yes sir; for the territory, so far as it is controlled by the Southern Pacific Railway, their rails running to New Orleans. They would certainly solicit the business for the longest haul.
>
> Q. And into what territory did that traffic move from California by New Orleans?
>
> A. Why, it moved to all the territory east of the Mississippi River north of St. Louis, and business moved to Chicago that way.
>
> Q. So that movement was both ways?
>
> A. Both ways.
>
> Q. And the solicitation, or the effort to move it, so far as you observed it, was both ways?
>
> A. The effort would apply the same in each direction."

He further testified on cross-examination, Folio 3756, that prior to the amalgamation of the agencies, the Union

Pacific was actively soliciting California business by way of Ogden. And again on cross-examination, (Folio 3759):

> "Q. Did I understand you to testify that while you were connected with the Missouri Pacific you had moved business to Portland by way of Ogden and the Shasta Route of the Southern Pacific?
>
> A. Oh, yes, business has moved that way.
>
> * * * * * *
>
> Q. What was its character?
>
> A. I should say general merchandising business.
>
> Q. Was that the best route from this territory to Portland?
>
> A. I wouldn't go into the detail of answering that. I should have thought the Oregon Short Line was the better route; but of course, using the Oregon Short Line, the Missouri Pacific came in competition with the Union Pacific; and necessarily it worked, where it could not get business through the Ogden gateway, meeting the competition of the Union Pacific as a factor, we could get assistance from the Southern Pacific in the solicitation of business over their own rails."

On re-direct examination he testified:

> "Q. Judge Lovett just asked you, in directing your attention to the Portland business, whether the Union Pacific from the Missouri River to Ogden, was not competing with the Missouri Pacific and the Rio Grande, and you said yes, they were competitive lines.
>
> A. Yes, sir.
>
> A. Prior to the amalgamation the Southern Pacific was competing with the Short Line from Ogden to Portland likewise, wasn't it?
>
> A. It was." (Folio 3762.)

At Folio 3769, Mr. Lincoln testified that eastbound business from the coast was competed for by the different lines

east of Ogden, and also the Sunset Route of the Southern Pacific, which competed against all of them. On re-cross examination Mr. Lincoln testified at Folio 3776:

> "Q. In answer to questions by Mr. Severance, on your direct examination, you testified or answered affirmatively his question as to whether the Southern Pacific and the Oregon Short Line were not competing for Portland business, meaning, I suppose, business from Ogden?
>
> A. They were competing.
>
> Q. You said they were. Now what business were they competing for, Mr. Lincoln?
>
> A. Oh, they were competing for practically all the traffic that moved through the Ogden gateway. The Southern Pacific would compete as against the Oregon Short Line, and the Oregon Railroad & Navigation Co.
>
> Q. To Portland?
>
> A. To Portland.
>
> Q. Competing as between their connecting lines?
>
> A. The Southern Pacific on the one hand working with its connections; the Oregon Short Line with its connections.
>
> Q. The Missouri Pacific working with the Southern Pacific?
>
> A. The Missouri Pacific, until the Union Pacific influenced the movement of the business over the Oregon Short Line, could work with both. Thereafter it worked with the Southern Pacific, if it could not secure the business as against the Union Pacific and the Oregon Short Line."

Mr. West, Assistant General Freight Agent of the Missouri & Texas Ry. Co. at St. Louis, and who had been for twenty years with that company in different capacities at St. Louis and other points, testified that his road worked transcontinental business delivering the majority of the traffic to the Texas Pacific at Fort Worth, which company

in turn delivered to the Southern Pacific at El Paso, and in addition the M. K. & T. handled a great deal of business via San Antonio, delivering directly at that point to the Southern Pacific. He testified at Folio 3804, that when the Southern Pacific and Union Pacific were separately represented at St. Louis, the Southern Pacific solicited their business through New Orleans and through Texas junctions, preferably New Orleans. He further testified that the M. K. & T. handled business out of Chicago and Illinois points, and then said:

> "Q. Did you in your effort to route traffic to Texas junction points at any place meet with the competition of the Southern Pacific-New Orleans route?
>
> A. Oh, yes.
>
> Q. Whereabouts? In what territory?
>
> A. Oh, everywhere on and east of the Mississippi River.
>
> Q. And which way did the Union Pacific, when it was separate, endeavor to route its business from this locality?
>
> A. They worked their business through Omaha or Kansas City, and as far as our line was concerned, through Junction City, Kansas."

At Folio 3805 he said his line participated very largely at times in the movement of fruit to the east from California, receiving it from the Texas Pacific at Fort Worth. He explained that in addition to the good service there were greater possibilities of diversion in transit, if fruit was routed by the southern route, a great deal of fruit being sold while on the rail. When it is billed out from the points of origin, it is consigned to some particular place with the privilege of changing the destination en route, and the movement by the southern route enables the shippers to

reach a greater territory and a larger number of destinations by diversions, than when it is shipped through the northern gateways. On cross-examination Mr. West reaffirmed what he said about the competition with the New Orleans route, (Folio 3808):

> "Q. Did they (the Southern Pacific) ever place any obstacle in the way of your getting the business by way of El Paso?
>
> A. Yes, it was an obstacle, of course, for them to try to get it via New Orleans.
>
> Q. But did you ever know of them to try to get it by way of New Orleans when you had any sort of a call on it by way of El Paso?
>
> A. Well, when we were both soliciting the business—as frequently occurred, of course—the influence of the Southern Pacific representatives would be in favor of the New Orleans route on business originating in territory on and east of the Mississippi River."

He further testified, at Folio 3809, that he never knew of the Southern Pacific co-operating with the lines leading westerly to move business by way of Ogden.

Mr. Peachy, Traffic Manager of a small railroad near St. Louis, formerly for many years Assistant General Freight Agent of the Illinois Central at Chicago and St. Louis, testified that the Southern Pacific worked with the Illinois Central to secure business via New Orleans, and that previous to the time the Illinois Central was built into Omaha, his company met with the competition of the Union Pacific in that business, and also the Santa Fe. (Folios 3812-13.)

On cross-examination Mr. Peachy said that from Chicago territory the Southern Pacific, in addition to working

with the Illinois Central for traffic by way of New Orleans, also worked with the lines by Ogden, but on re-direct examination testified that previous to the amalgamation the Southern Pacific worked for the New Orleans route, and the Union Pacific exclusively by the Missouri River gateway, and the two lines were in active competition with each other in that way. (Folio 3818.) Mr. Peachy further developed the fact, at Folio 3819, that however the Southern Pacific may at times have waived its interest in the haul by the southern line and permitted the traffic to move by Ogden, the Union Pacific was always fighting for business through the Missouri River gateway, and therefore competitive with the Southern Pacific on business that the latter was trying to work by New Orleans.

Mr. Swingley, in the coal business at St. Louis, and up to recently the Traffic Manager of the St. Louis Car Co., manufacturers of street cars, automobiles, car trucks and railroad cars, testified that that company shipped its product to the Pacific Coast; that a great many street cars and interurban cars are so large that they require certain equipment and a certain large clearance; that they could not move by way of the Union Pacific and Ogden, but could move by New Orleans (Folios 3822-3.) This is one way in which competition between railroads is useful, to-wit: It induces the roads to vie with each other in furnishing satisfactory equipment, and have their permanent way in such condition that it can carry all classes of traffic.

Mr. Field, since 1905 Traffic Manager of the Wrought Iron Range Co. at St. Louis, the largest stove manufacturer in the United States, was for twelve years with the Illinois Central Railroad at St. Louis, during most of the

time as contracting freight agent, and was working Pacific Coast business by way of New Orleans. (Folio 3829.)

Mr. Hanson, Traffic Manager of the National Enameling & Stamping Co., manufacturers of sheet iron, galvanized iron, enamel ware, and similar products at St. Louis, since 1899, previous to that time for five years in the same position with the St. Louis Stamping Co., testified that he remembered that the Union Pacific and Southern Pacific agencies were separate, and that both the agencies solicited Pacific Coast business from him, and the Illinois Central at that time solicited Pacific Coast business via New Orleans, but has not done so for several years. (Folio 3835.)

Mr. Gesarich, with Moon Bros. Carriage Co., St. Louis, since 1892, the largest builders of high grade carriages in that city, testified, at Folio 3848, that when the Union Pacific and Southern Pacific had separate agencies, Mr. Aglar represented the Union Pacific, and Mr. Townsley represented the Southern Pacific. Those gentlemen solicited his business, the Southern Pacific representative endeavoring to route the business either by New Orleans or some Texas junction, and the Union Pacific by the Missouri River. He further testified (Folio 3853) that he had found in his experience that competition between lines had led to improvements in service, and that he was interested in the service.

Leslie Aglar, the son of the former Agent of the Union Pacific at St. Louis, who died some years ago, testified that he was employed in his father's office in 1899 to 1901. Their agency was soliciting coast business by way of Kansas City and Omaha, and that his father's agency covered

passenger as well as freight business, and that traffic was actively worked by the agency. (Folios 3859-60.)

Mr. Broderick, in the wire rope business at St. Louis, further developed the influence that equipment has in determining the route traffic may take. He testified that he had traffic routed by the consignees at San Francisco from St. Louis by the Illinois Central and Southern Pacific, and he was obliged to change the routing because the stuff required larger cars than the Illinois Central was able to furnish. The Wabash had built cars for the purpose of handling their traffic, and hence the business moved over that route. (Folios 3869-70.)

Mr. Feickert, Traffic Manager of the Lemp Brewing Company of St. Louis, testified that that company ships over all lines to the coast, naming the Iron Mountain, Texas Pacific and Southern Pacific route, the Santa Fe, the Rock Island, Colorado Midland, and Ogden route, Missouri Pacific, D. & R. G. via Ogden, the Missouri Pacific and the Wabash in connection with the Union Pacific, and on Portland business, Missouri Pacific, D. & R. G., or the Missouri Pacific, Wabash and Union Pacific, the C. B. & Q., in connection with the Northern Pacific, and the Great Northern, and also by the Canadian Pacific, which latter line was by Wabash, Iowa Central, and Minneapolis & St. Louis to St. Paul, thence by the Soo Line and Canadian Pacific route to Portland, shipments over it being at an equality of rates with the Union Pacific and the Great Northern and Northern Pacific. He states that these various lines successfully competed for business by their respective routes. (Folios 3874-5.) He further testified that when the Union Pacific and Southern Pacific were

separately represented at St. Louis, their coast business was solicited by these separate agencies. (Folio 3876.)

Mr. McCarthy, Traffic Manager of the Salt Lake Hardware Co., Salt Lake City, for the past six years, previous to that for many years in the railroad service, and who was contracting agent of the Union Pacific at Salt Lake from 1897 to 1901, testified, at Folio 3911, that at the time of a controversy between the Union Pacific and the Oregon Short Line, the competing lines into Portland were the Union Pacific and the Shasta Route on the one hand and the Short Line and the Rio Grande on the other. For the purposes of that competition, the Union Pacific ran a train from Omaha to Ogden in thirty-two hours, and that when he was in a hurry to move traffic into Salt Lake, he tried to get it on this Portland train. (Folios 3911-12.)

Mr. Babcock testified (Folios 3942 et seq.) that business moving from the east or from the central part of the United States passing through Ogden and Salt Lake City to Portland and Oregon points, and coming east from Portland and Oregon points, moved in connection with the Denver & Rio Grande for a long time via Ogden, Sacramento and the Shasta Route, and the Union Pacific business coming from the east or moving to the east from Oregon territory ordinarily moved through Granger and Pocatello by the Oregon Short Line. He further testified, at Folio 3944:

> "Q. Now what happened when the Oregon Short Line was in the hands of receivers?
>
> A. The Ogden gateway, so-called, was open to the Rio Grande line; then we were enabled to work Portland business by that route, which was the Short Line,

> although we did not desert the Southern Pacific route. They desired us to work with that road so far as we could; in fact, desired us to work altogether with it, but we worked with both lines."

On cross-examination, Mr. Babcock explained that the business that moved by the Denver & Rio Grande in connection with the Shasta Route to Portland, was not simply business originating in Salt Lake or Portland, or its vicinity, but it was through business with Colorado and beyond, chiefly from Chicago and the middle west, not Atlantic seaboard business, because the Southern Pacific took that by the Sunset Route, but this business from Chicago and the middle west came through Denver, and thence over the Denver & Rio Grande to Ogden, and by the Central Pacific and the Shasta Route to Portland. (Folio 3987.)

After repeating on cross-examination that at the time the Oregon Short Line road was open to the Rio Grande, and the latter worked business through Salt Lake and Portland by way of the Short Line, they did not desert the Southern Pacific altogether, but worked business both ways, counsel endeavored to show by Mr. Babcock that the reason they worked with the Short Line was that the Short Line was a shorter and better route, but he explained, at Folio 3989, that at the time of the break between the Union Pacific and the Short Line in the spring of 1897, the Short Line turned practically all of their business over to the Rio Grande road, which was the reason for working so strongly with that line, and he further testified, at the same folio, that he had never had any complaint of the service by the Shasta Route.

Mr. O'Reilly, for a long time in the employ of the Union Pacific at Omaha, Denver and Portland, testified that for

a time during the receivership, the Union Pacific had difficulty with the Short Line, and the divisions were taken out by Ogden. The Union Pacific worked its traffic into Portland through Ogden and Sacramento and the Shasta Route. The Short Line at that time worked with the Colorado lines. (Folios 4344-5.) During that period the Union Pacific and Shasta Route made a special effort in the matter of service. (Folio 4346.)

Mr. Burdick, who has been in the prune canning business at Portland since 1898, shipping all over the country, testified that the O. R. & N. and the Southern Pacific separately solicited his business previous to the merger, and if the Southern Pacific secured it and the destination was some place in the interior like Kansas City, they would move it by Sacramento and the Central Pacific, while, if it was going to the Atlantic seaboard, it moved Sunset. (Folio 4384.)

Mr. McCusker, for many years the contracting agent of the Southern Pacific at Portland, testified, at Folio 4487, with reference to the east bound movement of hops, that Cincinnati hops moved by the Sunset Route by New Orleans in connection with the Queen & Crescent or Louisville & Nashville, and that the traffic was solicited by his agency for that route, and that hops also moved to Cincinnati by the O. R. & N., the Short Line and the Union Pacific. Mr. McCusker also testified before the Interstate Commerce Commission in 1907, and his testimony is inserted in this record by consent at Folios 711 et seq. At Folio 712 he said:

"Q. Now during that time, Mr. McCusker, what were your duties?

A. As contracting freight agent, they were to solicit freight for the Southern Pacific both via the Sunset Gulf Line, the Sunset all rail and the Southern Pacific via Ogden and Sacramento.

Q. Now during those days prior to 1901, did you, in soliciting freight by way of Ogden, work in connection with any line leading east from Ogden other than the Union Pacific?

A. I worked with the Missouri Pacific, the Rock Island, Burlington and the Rio Grande.

Q. What road was your strongest competitor for business into Portland when you were representing the Southern Pacific alone?

A. We consider the Union Pacific and O. R. & N. the strongest competitors.

Q. What classes of goods did you solicit shipments of?

A. All classes of merchandise.

Q. And from what points?

A. All points east; the Atlantic seaboard, Chicago territory, Pittsburg territory, Missouri River territory.

Q. And in general who were the persons solicited for shipments, were they wholesale men here in Portland?

A. Wholesale men and retail men."

He further said that he solicited shipments out of Portland to points competitive with the Oregon Railroad & Navigation Co. At Folio 717 he said his sole duty was to get all the traffic he could over the rails of the Southern Pacific, and at Folio 718, he said Chicago business moved in those days, so far as the Southern Pacific share in it was concerned, via Ogden and Sacramento; that they would get the business at Ogden from the Rio Grande or the Union Pacific; that he was instructed to work with any lines to get the haul, and didn't care which way it moved so long as he got the haul from Ogden to Portland. He

further testified (Folio 726) that years ago there was competition in rates between the Southern Pacific and the O. R. & N and its eastern connections. At Folio 727 he spoke of the time when by the Sunset tariff into San Francisco and the combination on San Francisco to Portland, the Southern Pacific got an advantage of 10 cents a hundred on the published tariff; that they handled considerable business, both carload and less than carload on that rate. Then the tariffs were amended to correspond on all lines. At Folio 728 it appears that the competition continued by cutting rates up to 1901. That sort of competition was participated in by all the lines. At Folio 734 he was asked about the movement of Cincinnati common points business to Portland, and said it would move Queen & Crescent or Louisville & Nashville to New Orleans, then to Portland via Sunset all rail. That was the Southern Pacific solicitation. Some of it moved by way of Ogden when they could not get it the other way, and they would take the haul from Ogden by Sacramento to Portland. He said that considerable business came out that way; that it consisted of whisky, merchandise of different classes, canned goods, vehicles, and the general class of merchandise that would come from that particular territory.

Mr. McCusker further testified, at Folio 4490, about the time that trouble was on between the Union Pacific and the Short Line, as follows:

> "A. I don't recall how long ago that was, but there was a time for a few months, it may not have lasted more than two or three months, when the Union Pacific made extra time to Ogden, and the business that they controlled came by the Southern Pacific, Ogden and Sacramento, to Portland.
>
> Q. Do you remember what time that train made from Chicago to Portland?

A. Yes, it made exceedingly good time, for I recall one particular car that we put in here in seven days and a half from Chicago."

At Folio 4491 he was asked whether the solicitations of business by the Southern Pacific people applied from Pittsburg over the Sunset Route, and replied:

"No, I am not positive. I think there was some business for Pittsburg solicited via New Orleans.
Q. How about business from Pittsburg this way?
A. That came via Ogden as a rule.
Q. And the Shasta Route?
A. Yes, when I say Ogden, that was the gateway; Sacramento was not a gateway."

From this it clearly appears that the competition to interior points and from interior points to Portland by the Southern Pacific was active. After testifying to the change in the efforts to move hops since the merger, he further testified (Folio 4504) that Cincinnati is a pretty fair hop market, and that there used to be pretty active competition between the O. R. & N. and Southern Pacific for that traffic.

Mr. Newbegin, member of a firm having a large business in agricultural implements of all kinds, testified that previous to the amalgamation their traffic was routed by the Denver & Rio Grande and some connecting line to the east to Ogden, and then to Portland over the Southern Pacific by Sacramento. The traffic was solicited that way by the Southern Pacific, and originated in Missouri, Indiana, Illinois, New Jersey, Pennsylvania, Michigan, Minnesota, and different parts of the eastern states. (Folios 670-1.)

Mr. Honeyman, wholesale and retail hardware merchant, in business for many years in Portland, testified that their

goods originate in all the manufacturing centers in the country. Before the merger there was active competition between the soliciting agents of the Oregon Railroad & Navigation Co., the Northern Pacific, and the Southern Pacific, on shipments from the east, and the Southern Pacific solicitation included both the Sunset Route and the Sacramento route, and they shipped goods by way of Sacramento, and also over the Union Pacific, Short Line and O. R. & N. (Folio 684.) At Folio 689 he said that the Sunset Route used to make low rates into San Francisco, forced by steamer conditions to that point, and they used to take advantage of that by adding the steamer or rail local from San Francisco to Portland, which made a lower combination than the rate to Portland direct. He further testified, at Folio 691, that when all the roads into Portland were competing for business in the old days, nearly everything moved in at less than the published tariff on cut rates, each trying to get the business away from the other.

Mr. Ehrman, wholesale grocer, testified that the goods that he sells come from all points in the east, not only the seaboard, but middle states, and prior to the merger the solicitors of the Southern Pacific and O. R. & N. both solicited his business one against the other. (Folios 707-8.)

Mr. Wilde, formerly chief clerk of the general freight office of the Union Pacific at San Francisco, testified that the Illinois Central maintained an agency in San Francisco, soliciting business by way of New Orleans into the interior of the country in connection with the Southern Pacific. (Folio 4566.)

Mr. Elmore, the largest shipper of canned salmon on the Columbia River, testified that before the consolidation, his business was solicited by all of the transcontinental lines, to-wit, the Northern Pacific, the Great Northern, Southern Pacific and Union Pacific, and that the Southern Pacific shipments used to go by Sacramento to Ogden, and thence by the Rio Grande to Kansas City. They moved both ways, both by the Shasta Route and the Rio Grande, and the Union Pacific and the Short Line. (Folio 4601.)

Mr. Kollock, for sixteen years the agent of the Pennsylvania Railroad in Portland, testified to competition between the Southern Pacific and the O. R. & N. agents, previous to the merger, and that the Southern Pacific endeavored to route their traffic to the east either Sunset or by the Sacramento route; the O. R. & N. by their route. (Folio 4606.)

Mr. Crichton, of the Columbia River & Puget Sound Transportation Co., which company up to the merger interchanged business with the Southern Pacific, originating at, or destined to, points along the Columbia River, between Portland and Astoria in competition with the boats and rail lines of the O. R. & N., testified, at Folio 4611, that the salmon delivered to the Southern Pacific by his company was destined not only to points along the Atlantic seaboard, but to southern points like New Orleans, Memphis, also Cincinnati and Pittsburg.

Mr. Toll, for a number of years in the employ of the Southern Pacific, when he left in 1905 being chief clerk in the general freight office, testified, at Folio 4850, that the Southern Pacific business from the central states, such as Cincinnati and Pittsburg, and other points west of the

Atlantic seaboard, to some extent moved through New Orleans, some by El Paso, and some through Ogden in connection with the Denver and Rio Grande and the Union Pacific, and there was quite a large volume of business of all classes moving by New Orleans from Ohio and that region. Mr. Toll further testified that as to traffic moving to San Francisco from St. Louis, the Southern Pacific at San Francisco solicited the business by New Orleans, and the Union Pacific by Ogden, and that in his opinion the solicitation of these respective lines influenced the movement of traffic. (Folio 4860.) He further stated that business originating along the line of the Louisville & Nashville and the Queen & Crescent, was the subject of solicitation in San Francisco by the Southern Pacific agency, and the routing was in many instances controlled in San Francisco. (Folio 4861.)

Mr. Graham, formerly freight solicitor for the Southern Pacific at San Francisco,, after testifying to the solicitation of Atlantic seaboard traffic by the Sunset Gulf route, was asked, at Folios 4867-68, whether he solicited exclusively for that route, and he said that he did not, but that for Cincinnati and territory south of the Ohio River, he solicited Sunset all rail by New Orleans, and that they hauled whisky from Louisville manufacturers, also traffic from Detroit, and that the Union Pacific had a soliciting agency in San Francisco, and were actively soliciting the same class of traffic that they were trying to work by the Sunset Route. The Union Pacific had three or four men on the street.

Mr. Adams, now Traffic Manager of the Pioneer Fruit Co. at Sacramento, from 1891 until a year ago the Com-

mercial Agent for the Rock Island in San Francisco, stated that the Southern Pacific worked business south of the Ohio River and from Cincinnati, Louisville and similar points by New Orleans, and they also got some business from points north, although they were not as active in connection with it. (Folio 4872.)

The Union Pacific was very active in Chicago territory and all points east. They solicited Cincinnati business, but he did not believe they were getting a very large share of it. (Folio 4873.)

He further testified, at Folios 4876-7, that the Rock Island, the Union Pacific and other lines were competing with the Sunset Route by New Orleans, and the Sunset-Gulf Route. This competition included the Union Pacific and Southern Pacific, the Sunset-Gulf, Rock Island, and the Rio Grande, and that each one of the roads was a competitor of the other.

Mr. Loose, a very large shipper of dried fruits from San Jose, testified that when the Union Pacific and Southern Pacific were separate, the Southern Pacific endeavored to move its traffic to Pittsburg, Cincinnati and Louisville, by way of New Orleans; the Union Pacific by the Ogden gateway to all points east of the Missouri River. (Folio 4891.)

On cross-examination he testified that he had shipped dried fruit to Pittsburg previous to 1901, and was solicited by Southern Pacific solicitors with respect to those shipments by way of New Orleans, and not through any other gateway, and that he made shipments of considerable volume of dried fruit to that market. (Folio 4894.) He again stated, on cross-examination (Folios 4895-6), that there was a period when the Southern Pacific worked the Pitts-

burg territory by way of New Orleans, and that they would go up to Pittsburg over the Louisville & Nashville, or Queen & Crescent, or Illinois Central, and then over the Vandalia & Pennsylvania.

Mr. Clifford, now living at San Francisco, who was for a long time in the employ of the Union Pacific as General Agent at Cincinnati, General Agent at Butte, and General Agent at San Francisco, as well as in the general freight office at Omaha, testified that when he was in Cincinnati his territory covered the City of Cincinnati, part of Tennessee, Indiana as far north as and including Indianapolis, the gas belt, Muncie and Marion, and as far north in Ohio as Columbus and Cleveland and all of Kentucky east of the Louisville & Nashville Railroad, including Louisville; that he worked transcontinental traffic out of all that territory, both east bound and west bound. The traffic moving west to California points was general merchandise, such as buggies vehicles, machinery, whisky and tobacco; that he had under him five soliciting agents. The east bound traffic from California and Oregon points, consisted of dried fruit, canned goods, beans, and all commodities peculiar to the coast, including the movement of hops to Cincinnati from around Portland. (Folios 4898 to 4901.)

The Southern Pacific agency at Cincinnati at the time had covered about the same territory, with the possible exception of Tennessee, and endeavored to route transcontinental traffic by New Orleans. Mr. Clifford said he met the competition of Southern Pacific agents in Dayton, Springfield, Columbus, Indianapolis, therough the Miami Valley country, and the gas country, from which bottles, jars, and all kinds of glassware, moved to the coast; vehicles

moved from Columbus and from both Columbus and Springfield machinery was competitive; also manufactures out of Dayton. (Folios 4901-2.) He testified that years before when he was in the Union Pacific office at Omaha the Southern Pacific was routing its business, so far as they could control it, by way of New Orleans. (Folios 4904-5.)

On cross-examination he said that his service in this competitive territory in San Francisco, Cincinnati or the general offices at Omaha, covered about twenty-five years. (Folio 4911.)

Mr. Scott, of the Pacific Hardware & Steel Co., one of the principal concerns on the coast, testified (Folio 4920) that the goods they wholesaled came largely from the Pittsburg district and the seaboard, considerable from the middle west, Chicago district and that region, and as far west as St. Louis and Iowa; the great preponderance of it from Pittsburg or between Chicago, New York and the seaboard. When asked by what all rail routes his company has shipped, he replied:

"A. All the routes."

After stating that he had shipped lots of goods by the Union Pacific, he testified (Folio 4921):

"Q. Have you shipped from Pittsburg and Cincinnati and that vicinity by New Orleans also?

A. Yes sir.

Q. All rail?

A. All rail, yes sir.

Q. How many years ago did you make those shipments; has that been continued since you have been in the business, off and on, I mean?

A. Oh yes, more or less. At periods we have shipped a large quantity of goods over one route and then changed over to another."

Again, at Folios 4923-4, he testified as follows:

"Q. Previous to the time that the Southern Pacific and Union Pacific came under one domination, what was the attitude of the Southern Pacific people in the solicitation of freight, if you knew anything about it at that time?

A. Yes, I am somewhat familiar with it; the position of the Southern Pacific?

Q. Yes sir.

A. They were very anxious to get their business via that route, via New Orleans, and the Union Pacific was very anxious to get it by their route.

Q. Did you ever ship any goods from Chicago by way of New Orelans?

A. Yes sir.

Q. How did that move out of Chicago?

A. Illinois Central, as a rule, to New Orleans, and then from there by Sunset.

Q. How long ago was that?

A. Well, there never was any great tonnage moved that way, for the reason that we never bought a great tonnage in Chicago, and the products that moved that way were carloads of freight that came from Chicago territory, and almost any time when we were shipping by Sunset, we would ship cars over that route, a portion of them, not all."

Mr. Watkins, for forty-five years with W. W. Montague & Co., a large wholesale house dealing in stoves, ranges, tinware, plumbing goods, mantels, grates and tiling, at San Francisco, stated that their goods came from all points in the east—New York, Boston, Philadelphia, Pittsburg, Cincinnati, Chicago, Milwaukee and Louisville. After testifying that he shipped from Atlantic seaboard territory, both boat and rail and all rail, he further testified that a small portion of his traffic, such as sheet iron, moved by New Orleans from Pittsburg and Wheeling. (Folio 4948.)

Mr. Rulofson, from 1870 to 1904 connected with Baker & Hamilton, another large wholesale hardware house in San Francisco, distributing goods all over the Pacific Coast states and territories, and Hawaii, testified at Folios 5025-6:

> "Q. Previous to the union of the Union Pacific and the Southern Pacific, did any traffic move from Cincinnati and Pittsburg by New Orleans Southern Pacific, any of your traffic?
>
> A. Prior to 1901?
>
> Q. Yes.
>
> A. Yes sir.
>
> Q. What class of traffic?
>
> A. Heavy hardware, nails, and probably barbed wire. * * * I think there used to be a line called the Cannon Ball Line that shipped that way, and we used to ship some Queen & Crescent.
>
> Q. Queen & Crescent to New Orleans and Southern Pacific here?
>
> A. Yes sir."

Mr. Prentice, employed by the Southern Pacific Co. from 1878 to two and a half years ago, and now President of the Phoenix Desk & Chair Co. of San Francisco, testified that the Southern Pacific endeavored to secure the routing of business from Cincinnati by way of New Orleans, and a little business moved from Pittsburg; that the business moving from Cincinnati and vicinity embraced all classes. Mr. Prentice also spoke of the package car that Mr. Connor had out of Cincinnati. (Folio 5033.) At Folio 5040 Mr. Prentice stated that it was the practice when he found that traffic was moving from some of the eastern centers to the coast, to telegraph to the Southern Pacific representatives like Mr. Herring in Pittsburg, Mr. Niemyer in Chicago, and Mr. Connor in Cincinnati, giving information as to the name of the firm or corporation that con-

trolled the routing of such traffic, so that the eastern representatives could attend to the solicitation of this traffic.

Mr. Michaels, Vice-President of the Langley & Michaels Co., wholesale druggists, one of the oldest houses on the coast, it having been in existence since 1850, testified (Folio 5090) that they have shipped occasionally by New Orleans from Cincinnati.

Mr. Settle, Traffic Manager of the E. Clemens Horst Co., shipping hops from California, Oregon and British Columbia, including the Willamette Valley region, testified that they have shipped hops to St. Louis via Kansas City, and also have had cars go via New Orleans and the Illinois Central. They have also shipped hops to Cincinnati, which is a brewing town, by New Orleans and the Illinois Central, the Baltimore & Ohio Southwestern. He did not know about the solicitation of business, but he knew that hops moved by the Southern Pacific via Sacramento from the Willamette Valley previous to the amalgamation. (Folios 5094-5.)

Mr. Rosenberg, shipper of dried fruits, with his principal place of business in San Francisco, testified that he remembered the solicitation of traffic to the Atlantic seaboard by the Southern Pacific and Union Pacific previous to the time they came under one management, and said that the Southern Pacific solicited their business by the Sunset Route. He further testified (Folio 5125):

> "Q. Was that competition between these roads active or otherwise?
>
> A. Active, not so much on seaboard business as intermediate territory.

Q. What territory?
A. Chicago, Indiana, Ohio."

At Folio 5126, on cross-examination, he said, concerning these shipments to the interior:

> "Q. As to this so-called competition, you had in mind the Southern Pacific line by the south, and the line of which the Union Pacific is part, by the north? Is that the situation you had in mind?
> A. Yes sir."

Mr. Munroe, Freight Traffic Manager of the Union Pacific lines east of Green River, formerly of the whole Union Pacific system, in answer to counsel for defendants, gave certain reasons why the Union Pacific organization had never thought it was wise to work Union Pacific traffic to San Francisco by way of Portland, and said, at Folio 647, that to do so it would be necessary to have a differential to San Francisco, and they had never felt it wise to accord to San Francisco a lower rate than was given to Portland direct. He then made this significant statement:

> "We did not care to advocate what we thought an unnatural freight rate basis of adjustment by charging the Portland man for less service, more than we charged the San Francisco man for the greater when both competed more or less in the territory intermediate as between Portland on the north and San Francisco on the south."

That answer means this: That in the ultimate distribution of eastern freights to the consumer, the Portland jobber and the San Francisco jobber are competing in the same territory. The interest of the Union Pacific is to aid the Portland jobber in that competition, and in doing so to carry all the traffic possible from the east to Portland over

their own rails; the interest of the Southern Pacific being more strictly with San Francisco, is therefore entirely opposed to the interest of the Union Pacific, and the freight that the Southern Pacific brings into San Francisco to be in turn distributed by the San Francisco jobber, is competitive with the freight taken to Portland by the Union Pacific, for the reason advanced by Mr. Munroe.

Mr. Munroe further stated at Folios 660-1, that he realized that under what he called abnormal conditions, the Illinois Central and Southern Pacific by New Orleans, had taken business from Chicago.

He then testified:

"Q. What about the lines from Kansas City to El Paso?

A. The lines from El Paso are much more a competitor.

Q. They are competitive to the Union Pacific?

A. They are.

Q. Chicago traffic moves that way, doesn't it?

A. It does, and we recognize that competition as an active and controlling force.

Q. Then as to Chicago business, the Union Pacific on the one hand, and the lines made up from here to El Paso, and the Southern Pacific from there on, are competing lines?

A. They are.

Commissioner Clements: Isn't there some territory somewhere south of this where both of these lines would naturally be competing?

A. The line naturally falls about the Ohio River.

Commissioner Clements: Cincinnati is about on the dividing line?

* * * * * *

A. About on the dividing line.

By Mr. Kellogg: You call that a natural dividing line, do you?

A. I do.

Q. And business north of that line has at times moved via the El Paso gateway, and business south of that line via Ogden?

A. Occasionally.

Q. And Pittsburg would be pretty strongly competitive territory then, wouldn't it, as it is right on that line?

A. Pittsburg is very strongly competitive.

Q. As between the Southern Pacific and the Union Pacific?

A. As between all the gateways."

c. COMPETITION AS TO TRAFFIC BETWEEN THE ATLANTIC SEABOARD AND COLORADO AND UTAH COMMON POINTS.

A large traffic has always been competitive into and out of Utah and Colorado common points, between the Southern Pacific and Union Pacific, and their connections. This competition may be roughly divided into two classes; first, traffic moving from the Atlantic seaboard to Colorado and Utah common points by way of the Southern Pacific steamers to New Orleans or Galveston, thence by rail to Fort Worth over the Southern Pacific tracks, thence to Colorado over a connecting line, and from Colorado to Salt Lake City or Utah common points over the D. & R. G., the same traffic being solicited and moved in competition with the Union Pacific in connection with the Kanawha Dispatch, and other fast freight lines, so-called, operating in connection with the steamers from New York to Newport News or Norfolk. In addition to competition with the line formed by the Union Pacific and its connections through Norfolk and Newport News, over which traffic moved at the same differential below the all rail rate that was in effect by the Gulf Route, a great deal of traffic also moved from New York common points all rail over the Union Pacific and its connections, which was also competitive with the Gulf Route of the Southern Pacific. Some time after the acquisition of the control of the Southern Pacific by the Union Pacific, the traffic continued by boat to Galveston, Texas, and thence up into Colorado and Utah by rail, instead of moving to New Orleans and thence by rail. The same opportunities for competition still exist.

The second competition existing between the Atlantic seaboard and Utah common points is traffic moving easterly. A large traffic in wool was formerly fiercely competitive

from Utah common points to Boston, the great wool market in the country, the competition being between the Central Pacific line of the Southern Pacific, which took the traffic westerly to Sacramento from whence it moved by the Sunset Route to New York, or the Rio Grande working in connection with the Southern Pacific rail lines east of Fort Worth and their steamship line to New York, as against the Union Pacific and Oregon Short Line, and their connections, seeking to move the traffic easterly through the Missouri River gateways.

Mr. Stubbs, in his testimony before the Interstate Commerce Commission, which is copied into this record, testified at Folio 586, that a differential existed by the South Atlantic as well as the Gulf ports (the South Atlantic ports being the term usually employed in speaking of Newport News, Norfolk, Savannah and Charleston) through which ports traffic moves to the west from New York, boat and rail. We quote from Mr. Stubbs' testimony, (Folios 586-7):

> "Q. So that business by the Sunset Route is in competition with lines running west from New York and Pittsburg to the Colorado points?
>
> A. Yes, sir, the Union Pacific works business that way in connection with the Savannah route, taking it from the Savannah route from Kansas City.
>
> Q. And as to that business the Union Pacific does not have to have the Southern Pacific as a connection?
>
> A. No.
>
> Q. So that the Southern Pacific and Union Pacific are naturally competitive as to that business?
>
> A. Well, they as a matter of fact—the way the business moves you may say there is a measure of competition there but it would not necessarily fol-

low, because the Union Pacific can make a line via Galveston as well as the other.

Q. But it can also make a line via Kansas City and Council Bluffs?

A. It has a line that way.

Q. And using that line to Colorado points, it does compete with the Southern Pacific via New Orleans?

A. To-day, precisely as it always has done."

The all rail rates and the differential rates via the Gulf routes, the same applying by the South Atlantic ports between New York and Colorado common points, will be found on Complainants' Exhibits 81-C and 81-D, at pages 870 to 872. (These pages are not folioed.) Also in the rate cards introduced in connection with the testimony of Mr. McCarthy at Salt Lake City, Exhibit 151, Folios 3898 to 3900, and Exhibit 152, Folios 3904 to 3907; also Complainant's Exhibit 193, Folio 5582, and Exhibit 194, Folio 5585.

At Folio 5586 it was stipulated that the sea and rail rates to Utah common points through Norfolk, Virginia, Savannah and Brunswick, Georgia, and Charleston, South Carolina, are, and for at least fifteen years have been the same as through the Gulf ports.

On Complainant's Exhibit 201, Formulae 41 to 45, appearing at Folios 5644-5, there will be found the division of the through rate accruing to the various parts of the all rail and differential lines. From this it will be seen that on business moving through South Atlantic ports, the Union Pacific being the line from the Missouri River to Colorado, receives 48.79% of the through rate, and to Utah common

points it, of course, receives the additional haul from Colorado to Utah, which, as appears by Formula 45, is 62½ per cent of the current Missouri River-Utah common points rate.

On business from the Atlantic seaboard to Colorado via New Orleans, it appears by Formula 44 that the Southern Pacific would receive 58.2% of the through rate; on business moving through Galveston 36% from New York to Galveston, and 22.2% from thence to Fort Worth, if it moved over the Southern Pacific line. On Utah business the Southern Pacific received 37.92 per cent of the total through rate from New York to Utah common points. (Babcock Fol. 3953.) This latter rate was of course much higher than the Colorado rate so the actual revenue of the Southern Pacific was probably the same. On a large traffic these divisions clearly furnish a very substantial reason for active competition.

Mr. Morton testified with reference to this competition, at Folios 1371 to 1374. We quote from his testimony at Folio 1373:

> "Q. What was the nature of the competition that existed—say into Colorado common points between these different lines? How did they compete?
>
> A. Each tried to get the other's business.
>
> * * * * * *
>
> Q. You spoke of the Southern Pacific being both a competitor and a connection of the Union Pacific on transcontinental business. Now was it a connection as to Colorado common points business? They did not use the Southern Pacific line, did they, to get into Colorado common points?
>
> A. The Morgan line of steamers was sometimes used.

Q. No, I mean did the Union Pacific use the Southern Pacific in any way to get into Colorado?

A. No, I don't think they did.

Q. So that as to that business they were not connections but strictly competitors?

A. Competitors."

Counsel for defendants, appreciating the importance of this testimony, endeavored to show by Mr. Morton on cross-examination, that business taken to New Orleans or Galveston might move to Colorado points by way of Kansas City, and thence over the Union Pacific, but he was not very successful. We quote from Folio 1394:

"Q. Now that business from New Orleans or Galveston to Colorado points, might move very naturally to Kansas City, might it not, and then over the Union Pacific?

A. For Colorado.

Q. Yes.

A. That would be taking it out of the way.

Q. From New Orleans?

A. Well, not from New Orleans, from Galveston, yes, it could move that way. It could move from New Orleans to Kansas City and thence via the Union Pacific.

Q. You don't know whether it moved that way or not?

A. I could not tell whether any moved that way or not."

Mr. Hawley testified, at Folio 1416:

"Q. Now, Mr. Hawley, at the time you were agent for the Southern Pacific here at New York, were you working business into Colorado common points and Utah common points?

A. Yes, sir.

Q. And how did that traffic move?

A. Via the New Orleans gateway, the Morgan line.

Q. And from thence to Colorado by what route?

A. The Houston & Texas Central and the Colorado Southern, and at stated periods in connection with the Rock Island.

Q. The Houston & Texas Central delivered to whom?

A. The Southern Pacific.

Q. How far did that run?

A. From Houston to Fort Worth.

Q. How did you reach Houston from New Orleans?

A. Over the Morgan's Louisiana & Texas Railroad and steamship lines.

Q. Was that also a Southern Pacific line?

A. Yes, sir.

Q. Therefore, in competing for Colorado business and Utah business, you used the Morgan line to New Orleans and later to Galveston?

A. Well, to Algiers, which is opposite New Orleans.

Q. Then by the Morgan's Louisiana & Texas line, and the Houston & Texas Central?

A. Yes, sir.

Q. Both Southern Pacific lines as far as Fort Worth?

A. Yes.

Q. And then to Colorado and Utah by the lines leading to the northwest?

A. Yes."

At Folio 1417 Mr. Hawley testified:

"Q. As to that business into Colorado, were you competing with the Union Pacific?

A. Certainly.

Q. How was that?

A. Surely.

Q. And in reaching Colorado the Union Pacific did not use any portion of the Southern Pacific lines?

A. Reaching Colorado?

Q. Yes, they run over their own rails?

A. No, the Southern Pacific did not have any rails into Denver.

Q. Now as to Utah business, Utah common points, were you in competition with the Union Pacific as to them?

A. Yes.

* * * * * *

Q. Did any of your traffic into Utah common points, that was brought around through Texas move to Utah by the Denver & Rio Grande and the Rio Grande Western?

A. Oh, yes.

Q. Most of it, didn't it?

A. Yes, sir."

* * * * * *

"Q. Was the traffic from the east to Utah and Colorado common points of considerable volume?

A. Considerable, yes, sir." (Folio 1418.)

On cross-examination, counsel for the defendants endeavored to develop the fact that certain of this business moving to Colorado by the Morgan line and New Orleans, moved thence over the Texas & Pacific, which was not a Southern Pacific line.

Mr. Hawley said that that was not the fact, and testified:

"Q. Your recollection is that that business moved via the Southern Pacific lines—

A. Entirely so." (Folio 1429.)

Again, at Folio 1430:

"Q. Did any other line out of New Orleans than the Southern Pacific participate in that business?
A. No, sir."

He further testified on cross-examination, (Folio 1431):

Q. How did business to Utah points, which you testified to, by way of the Gulf, reach Utah? That is, over what lines from Denver or from New Orleans? Didn't it go over the Union Pacific?
A. Well, the Denver & Rio Grande, and we occasionally had divisions in the Union Pacific."

On re-direct examination he made the movement of this traffic to Colorado very clear, (Folio 1433):

"Q. So you moved it from New York to Algiers opposite New Orleans, thence by Southern Pacific rail lines to Fort Worth, and then turned it over to the line leading to Colorado?
A. Yes.
Q. And you did not move any of it to Galveston and turn any of it over to the other lines there?
A. We may have sent some freight by Galveston when we were running an irregular ship, delivering it to connecting lines at Galveston, but the running of ships to Galveston direct during that time or during the time I had charge of the traffic was only periodical; it was a very irregular service.
Q. So if there was anything of the kind, it was a very trifling amount, and you didn't put in through rates in connection with any line out of New Orleans except the Southern Pacific, spoken of?
A. That is the only line we were working for, yes."

At Folio 1435:

"Q. I think you testified to this before, I am not sure. Which way did most of the traffic move to

Utah common points that you got over that way? Over the Rio Grande or the Union Pacific?

A. I should say over the Rio Grande."

Mr. Throckmorton, being questioned with reference to the solicitation of traffic out of New York when he was with the Southern Pacific, testified, (Folio 1474):

"Q. Did you have to do with shipments to Colorado and Utah common points?

A. I did, yes, sir.

Q. What is the nature of the traffic that moves from New York to those places?

A. The same thing; generally dry goods, machinery and everything of that character.

Q. All classes?

A. All classes of goods, yes, sir.

Q. Is that quite a considerable traffic, or is it very light?

A. It used to be very spasmodic as I remember it, especially to Colorado.

Q. What about Utah?

A. Well, Utah was, I think, more steady than Colorado. Colorado, though, always used to slow up till about November or December, and then there would be a big rush of it, as I remember offhand.

Q. Take the year together in the aggregate, was it a large business?

A. Yes, sir, a pretty good business. We always carried some stuff out there."

On cross-examination, at Folio 1492, he testified that since the Galveston line was established, practically all of that traffic moved by Galveston, and if the Morgan line carried the traffic, it generally moved from Galveston by the Houston & Texas Central, which is a Southern Pacific line. If the Mallory Steamship Line took it, it would generally go over the Atchison. And he stated, as did Mr.

Morton, that it would be a roundabout way to take any of it through Kansas City.

Mr. Mesick, General Eastern Freight Agent of the Rock Island, testified to traffic moving by the Morgan Line to Galveston, thence by the Southern Pacific, Houston & Texas Central line to Fort Worth, thence into Colorado by the Rock Island, and that the Union Pacific was one of the Rock Island's competitors into Colorado common points, whether the traffic comes by the Morgan line or by Chicago. (Folio 1508.)

Mr. Smith, until recently General Agent of the Pennsylvania Railroad in New York, testified that the Pennsylvania line participated in the movement of traffic to Colorado common points all rail, and that business moved largely by these boats. (Folio 1522.) He further testified:

> "Q. Was that traffic to Colorado and Utah common points trifling in amount, or was it considerable in amount?
> A. Why, I never knew the figures, but it must have been important." (Folio 1523.)

Mr. Bogert, now the agent of the San Pedro road at Pittsburg, for about twenty-one years General Eastern Agent of the Alton at New York City, testified that the Southern Pacific boats took traffic out of New York for Colorado common points and Utah common points in connection with the rail lines, and that the Alton handled business into Colorado points in connection with the Union Pacific, and that both the Union Pacific and the Alton were actively soliciting that business. (Folio 2085.)

Mr. Murray, of the Aluminum Co. of America, with factories at various points in the country, including several in New York common points territory, testified that he had made shipments into Colorado common points by way of the Morgan Line and Galveston. (Folio 2261.)

Mr. McCarthy, Traffic Manager of the Salt Lake Hardware Co., and from 1897 until six years ago contracting freight agent of the Union Pacific and the Oregon Short Line at Salt Lake City, testified that previous to the merger, the Union Pacific and Southern Pacific and the Oregon Short Line had separate commercial agents in Salt Lake. He gave the names of the various agents, and then said, (Folio 3896):

> "Q. When you were at work for the Union Pacific, previous to the time that the control of the Southern Pacific was acquired by the Union Pacific in 1901, over what routes did you work traffic, so far as you could, from the Atlantic seaboard territory to Salt Lake?
>
> A. In all rail movement, that was a matter which was left to the choice of the consignee, in ocean and rail movement, the favorite line was the Kanawha Despatch.
>
> Q. Where does the Kanawha Despatch start and where does it end, so far as the Union Pacific is concerned?
>
> A. The business originates at New York and moves by steamer to Newport News; west, the route that we used was C. & O. and Big Four into Chicago, and there delivered to connections of the Union Pacific.
>
> Q. The connections of the Union Pacific, and delivered to the Union Pacific at Omaha?
>
> A. Yes, sir.
>
> * * * * * *

Q. At that time was the Southern Pacific engaged in soliciting shipments to Utah from Atlantic coast points?

A. Yes, sir, very actively.

Q. By what route?

A. By their Morgan Line by way of Galveston."

At Folio 3923, he corrected this statement, stating that he should have said Gulf ports, and that business also moved through New Orleans. At Folio 3897, he testified:

"Q. How did the traffic that the Southern Pacific was able to secure by the Morgan Line reach Salt Lake?

A. It moved north through Fort Worth, Colorado common points, up over the Colorado & Southern principally, I think, through Colorado common points, Rio Grande to Utah.

Q. Did the traffic that was secured that way, by the Morgan line, the Gulf Route, move over the Union Pacific?

A. No, sir.

Q. What was the state of affairs as between the Union Pacific agency and the Southern Pacific agency in those days as to competition for this traffic?

A. Oh, there was most intense rivalry for it."

At Folio 3902, after having identified the rate cards, Exhibit 151, heretofore referred to, which gave the rate that he mentioned in his testimony, he testified:

"Q. In soliciting business for the Union Pacific at that time from the seaboard, did you endeavor at any time (I mean previous to the consolidation) to work business by the Gulf Route?

A. No, sir.

Q. That route, you say, was in strenuous rivalry with you?

A. Yes, sir."

At Folio 3908 he testified that from his knowledge of the movement of freight, he would say that 70% of the traffic from Atlantic seaboard territory to Salt Lake moved by the water and rail lines previous to the amalgamation of the Southern Pacific and Union Pacific, at a conservative estimate, as against 30% moving all rail.

On cross-examination, at Folio 3919, he said that the connections of the Union Pacific, such as the Northwestern, the St. Paul and the Burlington, also solicited business by the Kanawha Dispatch, for Salt Lake City, and the Denver and Rio Grande got some of this business. At Folio 3920 he said he presumed that the Denver & Rio Grande worked as actively for that business as did the Union Pacific. At Folio 3921, he gave the names of the other part water and part rail lines between Salt Lake City and the Atlantic seaboard during that time, together with two that have since been established, one of which is the Central Savannah line, mentioned by Mr. Stubbs in his testimony, as operating in connection with the Union Pacific. On cross-examination, (Folio 3921) he said:

> "Q. Now you don't mean to be understood as testifying, do you, Mr. McCarthy, that during the time when you testified that this traffic was moving by way of Newport News, and when you were using this card introduced here as Exhibit 151, that the Union Pacific got none of that business by way of the Morgan Line?
>
> A. I never knew of a car moving via the Morgan Line in connection with the Union Pacific during my experience.
>
> Q. Never knew of it?
>
> A. No, sir.
>
> Q. Do you know why it didn't try to move it that way?

A. I think the Union Pacific naturally would want its long haul from the Missouri River in preference to taking the short haul from Denver.

Q. That you would understand to be the reason why the Union Pacific would not work with the Morgan Line?

A. I should think so.

Q. Don't lines sometimes take a shorter haul when they couldn't get the long one?

A. They have done it since the consolidation.

Q. Have they never done so before?

A. Not to my knowledge."

At Folio 3924 he was asked by what route the Morgan Line business now reaches Salt Lake, and answered:

"A. It moves via Galveston, Southern Pacific lines to Fort Worth, Fort Worth and Denver City and Colorado Southern. That which I moved has moved that way, and in connection with the Union Pacific principally.

Q. It has been moving that way right along, hasn't it, since 1901?

A. I think so. * * *

Q. And then that which the Union Pacific handled from the Atlantic seaboard by way of Newport News was carried to the Union Pacific at the Missouri River by its rail connections east?

A. Yes, sir.

Q. And it got the haul on it from the Missouri River to Salt Lake?

A. Yes, sir.

Q. And that which it gets now from the same territory comes to it by way of Denver, and it gets the haul from Denver to Salt Lake?

A. Moving via Gulf ports; yes, sir.

Q. And it also handles a good deal of business from the east which comes to it all rail from the Missouri River still, doesn't it?

A. I think so, yes, sir.

Q. Doesn't business move from the east through this territory by way of Savannah?

A. I understand it does, yes, sir."

It also appeared, at Folio 3926, that previous to the merger he was not advised as to whether the Union Pacific had any rates in connection with the Morgan Line by way of New Orleans.

Mr. Babcock, Traffic Manager of the Rio Grande Western from 1895 to July, 1901, previous to that General Freight Agent for the same company, and very familiar with the movement of traffic into Salt Lake City, testified (Folio 3942), after saying that he was familiar with the solicitation of business by the Union Pacific and Southern Pacific into Utah:

"Q. How was it as to the movement of Atlantic seaboard traffic? How was the business worked by the Union Pacific on the one hand and the Southern Pacific on the other, through their respective agencies, so far as they could handle it?

A. The Union Pacific so far as I knew, worked via the South Atlantic ports, and the Rio Grande worked in connection with the Morgan Line through New Orleans, and with the Morgan Line through Galveston.

Q. How was the competition for that business—active or otherwise?

A. Very active.

Q. What would you say, Mr. Babcock, as to the percentage of traffic reaching Salt Lake City from the Atlantic seaboard territory, that is, New York and common points territory between the all rail lines and the water and rail lines?

A. I never had exact figures upon it. I don't know that anybody ever did, but it was generally understood to be anywhere from 70% to 85%.

Q. By water and rail?
A. Yes, sir, that is, from the Atlantic seaboard territory."

At Folio 3953, Mr. Babcock gave the divisions of the Atlantic seaboard rate to Salt Lake by the Gulf Route, and by the South Atlantic ports routes. From this it appears that of the through rate on business moving by New Orleans, the Southern Pacific would receive 37.92%; the line to Colorado from Fort Worth 26.67%; and the Rio Grande system 35.41%. This was after the deduction of certain arbitraries for marine insurance. When traffic moved through the South Atlantic ports, he testified that the ocean and rail lines to the Mississippi River, were given 20.4% of the through rate; from the Mississippi River to the Missouri River by the Rio Grande route 17%, and the balance was subdivided; west of the Missouri River, Colorado 37.5%; and from Colorado to Utah 62.5%; that is 5/8 of the Missouri River rate accrued to the lines between Colorado and Utah, and 3/8 to the lines between Missouri River and Colorado. It appeared further (Folio 3954) that the Union Pacific allowed only 16% to the lines between the Mississippi and the Missouri Rivers, instead of 17% given by the Rio Grande. At Folios 3954-5, he gave very significant testimony illustrating the thoroughly antagonistic relations existing between the Southern Pacific and the Union Pacific at that time. The Rio Grande and the Union Pacific, of course, controlled the only routes into Utah. Mr. Babcock testified:

"Q. At the time you were working business with the Morgan and Mallory Lines (Gulf Route) did you ever have any conference with the Union Pacific officials with reference to getting a larger division of the rate allowed to the rail lines such as the

Union Pacific or the Rio Grande, as against the boat lines, such as the Morgan Line?

A. Why, Mr. J. A. Munroe was Freight Traffic Manager of the Union Pacific Railroad, and at various times suggested to me that while our lines were performing the same all rail service, whether the traffic moved all rail from New York, or whether it moved through the Atlantic or the Gulf ports, that we should have all rail revenue out of the traffic moving by the Gulf or Atlantic ports, and at these various times expressed the desire that I should join with him and the other lines in demanding that basis of division.

* * * * * *

Q. What attitude did your road take upon that proposition of Mr. Munroe?

A. Well, we never considered it favorably; we felt that it would have been an unfriendly act toward the Morgan Line and the Mallory Line, who had given us a very satisfactory amount of traffic, and we never took any action to that end."

Mr. Love, Traffic Manager of the Zion Cooperative Mercantile Institution, the largest establishment in Utah, handling all kinds of commodities, with a total rail tonnage of about sixteen thousand tons a year, receiving goods from all parts of the country, testified that their freight from the Atlantic seaboard reaches Salt Lake largely through the Gulf port lines, and further said:

"Q. Do you remember the time that the Union Pacific and the Southern Pacific had separate agencies here?

A. Yes, sir.

Q. Was your traffic solicited by those agencies?

A. It was.

Q. By what route did the Union Pacific solicit your traffic from the Atlantic seaboard?

A. They preferred the long haul route from the Missouri River by the Kanawha Despatch, the

Cumberland Gap Despatch, and I think there was one other water line operating at that time—I just don't recall the name. I think there were three water lines through the Atlantic portal routes at that time, which they used, but the Kanawha Despatch was the preferred line.

Q. Which way did the Southern Pacific agency solicit your traffic from the Atlantic seaboard?

A. By the Morgan line.

Q. In connection with what rail lines did that traffic move?

A. Well, our business was just a little bit different from that of other people. We always preferred to control the routing west of the Colorado junctions for local reasons, and we sometimes used one route, and sometimes the other, but as a rule, we used the Rio Grande route from west of Denver." (Folio 4045.)

He was further asked what percentage of the traffic of freight from New York and New York common points moved to Salt Lake boat and rail, and stated that he could only judge by the tonnage of his own establishment; that they never used the all rail lines unless on some shipments that they were in a particular hurry for, and that fully 90% of the seaboard stuff moves boat and rail. At Folio 4047, Mr. Love testified:

"Q. How was that competition between the Union Pacific and the Southern Pacific agencies here for that business? Was it an active competition or otherwise?

A. It was keen."

On cross-examination, he testified that for about a year past they had been shipping by the Kanawha Despatch and the Missouri Pacific out of St. Louis; prior to that time they used the Mallory Line and the Morgan Line largely by Galveston, but the service became very bad that way, so they had taken up the Kanawha Despatch; that he

had been using the Gulf Line since about 1892 or 1893, the traffic moved to Galveston or New Orleans from New York, and when out of New Orleans, by the Southern Pacific connections and Houston and Texas Central, and by way of Denver. He then testified, (Folio 4111):

> "Q. Did any of it come through Kansas City?
> A. No, sir.
> Q. Practically all of it that came through the Gulf, then, came by way of Denver?
> A. We did use another route at one time. We used the route via the Mallory Line to Galveston, M. K. & T. to Junction City, and then the Union Pacific in here.
> Q. Did you use that a good deal?
> A. No, not a great deal; we used that during war days, during railroad rate war days.
> Q. When was that?
> A. In the early nineties—or the late nineties, I mean to say. They were cutting rates a great deal."

He further repeated that the business by the Morgan Line and the Mallory Line came by Denver, and while they had shipped over the Union Pacific, they used the Rio Grande very much more from Denver, and never attempted to equalize the business between the lines, unless for some local conditions affecting them. (Folios 4111-12.)

It further developed on cross-examination that a through car had been established from Newport News to Salt Lake; that the Kanawha Despatch had daily boats out of New York, Philadelphia and Baltimore to Newport News; and they ran this Salt Lake car out of the latter point if they had 8,000 pounds of package business, commonly called shoestring business. This car comes into Salt Lake City about tri-weekly. (Folio 4113.) He reiterated on re-direct examination, that the Union Pacific, while soliciting boat and rail business, worked with the Kanawha Despatch, and

tried to route business that way, and that his business was solicited by Mr. McCarthy, when he was with the Union Pacific. (Folios 4116-17.)

Mr. Oglesby, at one time employed at Salt Lake with the Union Pacific, and from 1888 to 1907, the representative of the Rock Island there, testified to the separate agencies formerly maintained by the Union Pacific and Southern Pacific at Salt Lake, and at Folio 4167, stated that he knew Mr. McCarthy well when he worked for the Union Pacific, and knew Mr. Gray who represented the Southern Pacific, and that the competition between them for Atlantic coast business was very active, and that the Rock Island participated in that competition.

Mr. Stubbs when testifying for the defendants corroborated the testimony of the complainant, and stated that the Salt Lake agency of the Southern Pacific was seeking the business into Utah by the Gulf route, and the Union Pacific agency was seeking the business by that route. (Folio 6612.)

On being recalled to the stand, he advanced the theory (contradicting his direct statement at Fols. 586-7), apparently in the nature of a legal opinion, that there could not be competition between the Southern Pacific and the Union Pacific on Colorado and Utah business out of New York, because the Southern Pacific was the initial carrier, the Union Pacific the delivering carrier, and hence the competition would be between the Southern Pacific and the lines east of the Missouri River and between the Union Pacific and the connections of the Southern Pacific west and north of Fort Worth, and he said, at Folio 6695, when his attention was called to Mr. Hawley's testimony as to

competition between the Southern Pacific and Union Pacific for this business:

> "I do not think he properly conceived what the term 'competition' in the sense that we are using it here, meant. * * * I mean in the sense that the law uses it, sir."

When he was reminded that Mr. Hawley was a man of such intelligence that the Southern Pacific had retained him in charge of its business in New York for nearly twenty years, he gave him the following certificate of character:

> "Now as to Mr. Hawley,—he is a very able man, a very competent man, and he knows his business as well as any man in the country."

Then follows this testimony:

> "Q. Is it not a fact, Mr. Stubbs, that your agency here, under the leadership of Mr. Hawley, was actively soliciting business to Colorado by the Gulf Route?
>
> A. It is a fact.
>
> Q. Isn't it a fact that the Union Pacific at that time was engaged in actively soliciting that business in—you don't like the word 'competition,' but we will say as against the Gulf Route, trying to get it by the Missouri River?
>
> A. The Union Pacific always solicited business everywhere for its long haul, as every other line.
>
> Q. Then if the solicitation of business by the Southern Pacific by one route, and the solicitation by the Union Pacific for the business by another route, makes competition, they were in competition, weren't they—if that itself would make competition?
>
> A. If that would make competition, yes."

Mr. Hannaford at Folio 8055, when asked to define competition between railroads, said:

> "I think where two roads are soliciting the same business between the same points that they might be called competitors for that business."

Mr. Munroe, Freight Traffic Manager of the Union Pacific, when called by the defendant after having testified on cross-examination that what was formerly known as the Union Pacific, Denver and Gulf, now known as the Colorado and Southern, running from Denver to Fort Worth, was lost to the Union Pacific in 1893, said at Folio 6854:

> "Q. And therefore from December, 1893, the interest of the Union Pacific on business from New York common points, whether by broken water and rail lines or all rail, was entirely by the Missouri River, wasn't it?
>
> A. Yes. * * *
>
> Q. It is a fair statement, isn't it, that after you lost the control of the Southern you worked your business through the Missouri River?
>
> A. Yes.
>
> Q. And the Southern Pacific people worked theirs by the Gulf?
>
> A. Yes."

On his direct examination in answer to counsel for defendants he gave some interesting testimony with reference to this competition, and to the efforts made by the Union Pacific to work Colorado and Utah business by broken water and rail lines through South Atlantic ports in competition with the Gulf Route: (Folios 6809 et seq.)

> "From the year 1893 to 1898 the conditions all over the country were very bad commercially. During that period every merchant was seeking to re-

duce his expenses and increase his earnings in every possible way. Business was very poor. The differentials, therefore, appealed more strongly than ever before; and we noticed quite a material deflection of traffic theretofore moving all rail (which, by the way, paid the Union Pacific more money than the water and rail), from the rail lines to the water lines; and we felt that it was high time for us, in street parlance, to get busy and work a water line; and we put forth our efforts; * * * and we cast about for a new line. At that time the Ocean Steamship Company running between here (New York) and Savannah, and the Georgia Railroad from Savannah to Birmingham, made direct connection with the Frisco from Birmingham to Kansas City, and with our line to Denver, we thought we could develop quite a traffic. We were aware of the close relations at that time between the Frisco and the Rock Island. We conferred with the Frisco, and they were very alive to the situation and desirous of co-operating with us and raised the question whether we could successfully co-operate, and they said we could, and assured us that notwithstanding the Frisco relations with the Rock Island we would have their undivided support west of Kansas City. On that basis we got together and worked very hard and built up a very nice tonnage. * * * After we had gotten it going pretty well, the Frisco people underwent a change of heart and notified us that their relations with the Rock Island were such that they would have to work preferentially with the Rock Island as against the Union Pacific; would have to operate their through package cars Rock Island and not Union Pacific; would be glad to handle anything we might give them as far as Kansas City, and give it to us there, handling it in their Kansas City car. That convinced us that we could not afford to have a half-hearted partner, and that it meant the breaking up of the line; and we so accepted that situation and cast about and did make new alliances and were

successful in transferring a nice lot of our business from the old to the new line thereby created. * * *

Q. And because you did not want any half-hearted member of the through route you looked about for other alliances, and established another through route via the South Atlantic ports?

A. That is true, coupled with this thought—that we knew from experience that if they handled our business part way, it would only be a very short time before they would attempt to handle it the entire way, and we didn't think it wise that we should put our interests in their basket, so to speak, east of Kansas City.

Q. Now explain the details of that; why was it not wise, and how could they take advantage of you if you continued to do business with them?

A. We will suppose that Mr. A, living in Denver, was a regular patron of the Union Pacific west of Kansas City, and that we routed through him 500 tons of freight, if you please, within a given period from New York to Denver in connection with the **Frisco east of Kansas City.** They would participate in the revenue, of course; they would know where the business came from and to whom it was going. They would make a careful analysis of the business, and the first thing we would know would be their efforts applied to Mr. A to divert the business, not from their rails east of Kansas City, but to the Rock Island ones west thereof, and to cut us out of the business. In other words they would make their best efforts to wean away joint patrons and make them 100% patrons of the line in which they were more interested.

Q. Who controlled the routing of that traffic?

A. Very largely, consignees in Denver.

Q. And you worked the business up through solicitation with the Denver shippers?

A. The Union Pacific is a strong line in Denver, and its strength was recognized by the Frisco; hence the original arrangement. We worked it actively with the consignees. * * * We then

transferred our efforts from the so-called Savannah-Frisco line to the Cumberland Gap Dispatch, which consisted of steamship service from New York to Norfolk, and the Norfolk & Western and its connections to Kansas City; Union Pacific beyond. That line is still in existence and enjoying a very reasonable share of the traffic."

This testimony of Mr. Munroe's shows clearly the naturally competitive situation as between the Southern Pacific and the Union Pacific on Colorado and Utah business, and also makes clear the influence of commercial agencies in controlling the routing of business, and emphasizes the testimony introduced by the complainant to show the destruction of competition occasioned by the consolidation of the Southern Pacific and Union Pacific agencies at points where they were formerly in active competition.

Wool Traffic Eastbound.

As we said before, in addition to competition for traffic moving from the seaboard to Utah, an exceedingly strenuous effort was made by these respective lines to handle the traffic in wool and other products originating in the mountain country and destined to the east. The great wool market of the United States is at Boston, and wool moves there from all regions. The effort of the Southern Pacific was to move the wool from Utah, Nevada, Idaho, and Wyoming to Boston by way of California and the Sunset Route; that is, it would be taken west 700 or 800 miles, thence carried south by New Orleans and shipped to New York, and there delivered to a connecting boat or rail line for Boston. The Union Pacific organization, on the other hand, endeavored to route this business easterly through the Missouri River gateway, either loading it

directly on the Union Pacific, or more frequently on the Oregon Short Line, the subsidiary company of the Union Pacific. Even to the present time, tariffs are in by which wool can be moved by the Southern Pacific by way of California in competition with the all rail lines direct to the east from points as near to Ogden as Corinne, Utah, a station on the Southern Pacific only twenty or twenty-five miles west of Ogden. At Folio 3935, a stipulation was put in, giving the substance of a new tariff sheet of February 5th, 1909, effective March 17th, 1909, covering wool from Corinne, Utah, to New York and Boston common points, of 207½ cents per hundred by the Southern Pacific to California, thence Sunset and Gulf steamship lines. This tariff, as will be seen at Folios 3936-7, applies from all points on the Southern Pacific west of Corinne to New York and Boston common points territory. This rate on wool applies also all rail via Ogden, as appears by the Complainants' Exhibit 189, produced by Mr. White in connection with his testimony at Folio 5571. Mr. McCarthy testified that he was familiar with the efforts made to secure the wool shipments to the east previous to the merger, and that wool moving to the east originates at all wool producing points along the Oregon Short Line, on the Union Pacific east of Ogden, and on the Rio Grande south and east of Salt Lake, and that there is a territory lying between the Southern Pacific west of Ogden and the Oregon Short Line, in California and Utah, eastern Nevada, and southern Idaho, that produces a great deal of wool; that at the time the Union Pacific and Southern Pacific were competing with each other for business, the Southern Pacific would not allow other lines in this territory, but the Short Line worked the business by endeavoring to draw the sheep away from the vicinity of the Southern Pacific

and over to the Oregon Short Line, so that they might be sheared along that line. At Folio 3914 he further explained:

"Q. That is what I mean; that was a way of getting the shipment of the wool, wasn't it?

A. Yes, sir.

Q. The sheep were on a ranch or in between those two lines there?

A. Yes, sir.

Q. What I want to know is whether the Southern Pacific was competing for that business—the wool or the sheep—and the Short Line also?

A. Yes, sir.

Q. When the Southern Pacific secured that wool traffic, how did it move to the Atlantic seaboard?

A. I understood that it moved via the Gulf, via Galveston. It went west over the Southern Pacific, and east over the Sunset Line to Galveston.

Q. And when the Short Line secured it, how did it move to the east?

A. Moved directly east by the Union Pacific."

Mr. Babcock stated (Folios 3947-9), that the wool traffic from the region of Salt Lake City was a very important traffic, and that it originates in various parts of Utah, also Nevada, southern Idaho and Montana. He testified:

"Q. At the time the Union Pacific system was separate in management from the Southern Pacific system, what was the fact as to whether there was any competition for wool shipments out of any of this territory between those systems?

A. The competition in wool commenced very early in the season, before it was taken off the sheep's back.

Q. Explain that whole situation.

A. The Oregon Short Line people endeavored to attract the sheep away from the line of the Southern Pacific west of Ogden; on the part of the Union Pacific they tried to attract it away from us to Ogden by trailing the live sheep along into western Wyoming, and in southern Utah we did our part towards trying to attract sheep over on to our line, away from the Oregon Short Line and letting them be sheared on our line.

Q. When the Southern Pacific were successful in this effort to attract sheep and therefore wool,—which way did they move the wool to the Atlantic seaboard?

A. Usually, so far as my knowledge went, it moved via Sacramento and the Sunset Route, so far as they could control it. Occasionally they had rates in from some points in Nevada eastbound through Ogden, and some buyers, perhaps, insisted on it taking that route, and from some of the nearby points an occasional shipment would be made through Ogden.

Q. But you say that the bulk of it, when they could, they worked by the Sunset Route?

A. The bulk of it, as I understand, went to California, and thence by the Sunset Route to the Atlantic seaboard.

Q. When the Union Pacific was able to attract the sheep, which way did they move the wool?

A. Over the Union Pacific system direct.

Q. And which way did you move it when you got it?

A. Sometimes all rail, but quite largely by rail and ocean.

Q. Where would you deliver it to the ocean carrier?

A. At Galveston largely.

Q. What do you know about a tax levied by the state of Wyoming that used to be at times assumed in an endeavor to get traffic of this kind?

A. I always understood there was a tax per head on sheep brought into Wyoming from Utah or Idaho, and the Union Pacific people in their desire to attract the sheep over there, I understand, paid that tax, to get the sheep away from us.

Q. And also to get the sheep away from the Southern Pacific?

A. Yes.

Q. To what part of the country did most of that wool move, Mr. Babcock?

A. Boston, New England.

Q. Boston is the great wool market of the country, isn't it?

A. Yes, sir.

Mr. Love testified, at Folio 4049:

"A. We had some complaint from customers of ours in that part of the country regarding the rate on salt, and they complained that they were carrying these sheep men through the winter for supplies, and in the spring the railroad company were shipping up there and distributing it through their agents, and these sheep men would take the little cash they had and pay it out to the railroad company for salt; and I went to Mr. Eccles (the Oregon Short Line representative), and complained about the situation, and he said he had to do that in order to invite the sheep men to shear along his line in competition with the Southern Pacific Company."

The time that Mr. Love refers to was at the time of the competition testified to by Mr. McCarthy.

Mr. Oglesby, the Rock Island representative at Salt Lake, testified, (Folios 4167-9):

"Q. What did you know about the competition that existed prior to 1901 for wool shipments to the east from this region?

A. It was very active—very.

Q. How did the Southern Pacific endeavor to move the wool that they could secure?

A. The bulk of the wool on the line of their road moved by Sacramento, the Sunset Route and the Morgan Line.

(By mistake of the printer this reads in the record "our road" instead of "their road.")

Q. How did the Union Pacific move it?

A. The Union Pacific took it straight east and delivered it to its friendly connections, who had secured the wool by their own personal solicitation.

Q. And were you after the wool too?

A. Yes, sir.

Q. In connection with what road?

A. You mean here?

Q. Yes, sir.

A. Any one of them that the shipper preferred. You see we could take any stand at all; we were sort of free lances.

Q. You were working to get your part of the haul?

A. That was all.

Q. But of course your interest was opposed to the Southern Pacific because they took it the other way?

A. Unquestionably.

Q. What methods were adopted, if you know, to secure wool shipments?

A. Well, we had a good many; the principal one was that we were able to furnish a man to assist the wool buyer in this way: He would notify me at my office and say, 'I have some wool. If you can send a man to receive it, mark it, weigh it and load it, you can have it over your line.' I would send a man there. That was one of the methods; and there were other methods.

Q. Were there methods adopted to secure the driving of the sheep from one line to the other for shearing?

A. Well, we took no part in that, you know. It was done by the different lines here. These other lines did it—the Southern Pacific and the Oregon Short Line and the Union Pacific and the Rio Grande Western. They all pursued that course.

Q. They endeavored to get the sheep driven to their line?

A. Over to their line where they could shear; yes, sir.

Q. Was there a good deal of wool in this competitive territory where those methods were adopted?

A. Yes, sir, considerable."

On cross-examination, by the defendants counsel, Mr Oglesby was asked where that wool for which the Southern Pacific competed originated, and answered:

"A. Well, it would originate in between the territory north of the line of the Southern Pacific and south of the Oregon Short Line. They would endeavor to get the sheep over to their own line; that is the territory extending out, possibly, we will say, one hundred and twenty-five miles.

* * * * * *

Q. Wool originating in that territory the Southern Pacific sought to move by way of Sacramento and the Sunset Route?

A. Yes, sir.

Q. And the Oregon Short Line sought to move it east over the Union Pacific?

A. Yes, sir." (Folio 4170.)

Mr. Summerhays, of the Rowe, Morris & Summerhays Co., dealers in hides, wool, furs, plaster, hair, etc., with the principal market in the east, handling forty-five million pounds of hides and wool in a year, and who has been in business since 1883 at Salt Lake, testified, (Folio 4184): That when the Union Pacific and Southern Pacific had separate agencies, his business was solicited by them separately, and the Southern Pacific ordinarily endeavored to move business to the east by California. At Folio 4185 he gave testimony similar to that of the other witnesses as to the efforts made by the Short Line People and the Southern

Pacific to get the sheep sheared at points contiguous to their respective tracks. He also testified that in those days there was competitive solicitation for the hide business between the Southern Pacific and Union Pacific systems. (Folios 4185-6.)

Mr. McBride, agent of the D. & R. G. in Portland for the last seven years, and who for the five years immediately proceding lived in Butte, Montana, and prior to that in Salt Lake, where he was connected with the Union Pacific, the Chicago & Northwestern and the D. & R. G., part of the time traveling through into Idaho and Montana, soliciting traffic, (Folio 4373), said that he was familiar with the territory in southern Idaho, northern Utah, and Nevada, lying between the Oregon Short Line on the north, and the Southern Pacific on the south. He further testified as follows:

> "Q. When you were over in that country, how did the wool from that region move to the east, to the seaboard?
>
> A. That would depend on what line it was loaded.
>
> * * * * * *
>
> If it was loaded on the Oregon Short Line, it would move east all rail, and if loaded on the Southern Pacific, it would go via Sacramento and the Sunset Route.
>
> Q. Was there any competition in that wool business in the region between those lines?
>
> A. Yes, the competition, however, was when the wool was on the sheep's back.
>
> Q. To get the sheep driven from one place to another?
>
> A. In order to get the sheep sheared adjacent to the various lines.

Q. Was that an active competition or otherwise?

A. At times it became quite active, and other times not so much. It would depend a good deal on feed for the sheep en route going to the summer ranges; some seasons they would drive north, and some seasons they wouldn't go so far. It would depend a good deal on the spring feed en route.

Q. Did these two railroads, the Short Line and the Southern Pacific each have soliciting agents in that territory trying to get that business?

A. Yes, sir." (Folios 4374-5.)

He also testified that livestock moved out of that region both over the Oregon Short Line and the Southern Pacific; that it was all moving to the Missouri River packing houses all rail. If the Southern Pacific secured the traffic, they would deliver it at Ogden either to the Denver & Rio Grande or the Union Pacific, but the Short Line always delivered it to the Union Pacific except during the time that the divisions were out between those lines. (Folios 4375-6.)

On cross-examination he testified that while that competition for wool traffic was thus active, there were no divisions between the Southern Pacific and the Union Pacific or Rio Grande on that wool through Ogden, but that all the wool that was controlled by the Southern Pacific went to the east by Sacramento and the Sunset Route. (Folio 4379.)

At Folio 4381, he further testified that at that time a great many sheep wintered in what was known as the desert, west of Salt Lake, and in the spring of the year, as the shearing season approached, they would go to the summer ranges in Idaho, and when they started north the solicitation would commence to have them stop and be sheared somewhere near these respective lines.

Mr. Moses, a wool merchant in San Francisco for many years, says that most of his wool originates in California, some of it in Nevada and Oregon, and that it is his impression that his Nevada wool moves to Boston by the Sunset Route, from most of the way through Nevada, although he is not entirely clear as to whether some of it may not move the other way. (Folios 5105-6.)

Mr. Koshland, for many years in the wool business at San Francisco, buying and shipping to Boston, testified, (Folio 5113), that he buys wool in Nevada clear across the state, and that that mostly moves east Sunset, and in the last few years none of it has moved the other way, although some years ago it did. On cross-examination he states that at the time he moved wool eastwardly over the Union Pacific, joint rates were in between that company and the Southern Pacific. (Folio 5117.)

The defendants produced as witnesses two of their employees from Utah who disputed the testimony of these various disinterested witnesses of the complainant as to the competition on wool shipments from Northern Utah, Nevada and Southern Idaho, to-wit, Mr. Plaisted and Mr. Reeves. But these witnesses corroborated Mr. Babcock as to the competition for the wool traffic of Southern Utah At that time the Oregon Short Line owned the rails in Southern Utah now owned by the San Pedro line, and Mr. Plaisted testified, at Folios 7700 and 7701, that there is a large number of sheep shorn in southeastern and southwestern Utah along the lines of the San Pedro and Rio Grande, although the traffic is less in amount than it was in 1900 and 1901, and this business is competed for by those two lines of rails; and at Folios 7702 and 7703 he stated that

these competing roads maintained corrals built in a suitable manner for shearing sheep, and furnished free to the sheep men to induce the shearing of the transient herds moving across the tracks of these two lines from Central Utah to southwestern and southeastern Utah in moving from the winter to the summer ranges. At Folio 7708 he admits that in certain years previous to 1901 a great deal of this wool moved ocean and rail when the Rio Grande secured it. At Folio 7714 he states the amount of the wool traffic competitive between these two lines in Southern Utah is now about nine million pounds annually. Mr. Reeves on cross-examination at Folio 7723 testified that the Southern Pacific agency in Salt Lake worked with the Denver & Rio Grande in securing this business by way of Galveston in competition with the Short Line, which was part of the Union Pacific system.

d. COMPETITION AS TO TRAFFIC BETWEEN PORTLAND AND UTAH AND COLORADO COMMON POINTS, INCLUDING CERTAIN POINTS IN NEVADA.

There is a large traffic interchanged between Portland and Salt Lake and Utah common points. As to business between Ogden and Portland, it could be handled either by the Shasta Route of the Southern Pacific through Sacramento, or by the Oregon Short Line, and Oregon Railroad & Navigation Co., and such traffic is necessarily completely competitive between the Southern Pacific system owning the Shasta Route, and the Union Pacific owning the Short Line and the Navigation Co. We have heretofore called attention to an abundance of testimony showing that these respective lines were used as part of the through lines moving traffic between Portland and the east. In addition to this, the testimony shows that these lines were active competitors on business moving locally. It is true that the Shasta Route and Central Pacific Line of the Southern Pacific is longer, and climbs two mountain ranges instead of one, as is the case with the Short Line, but that is in no sense prohibitory, as has been developed by the testimony; and, as the Court knows, many lines are competitive where one of the competitors is at a great disadvantage, so far as distance or grades are concerned, and still they are able to compete on equal terms.

Mr. Babcock testified that as to traffic moving between Salt Lake City and Portland previous to the merger of the Southern Pacific and Union Pacific, the Rio Grande handled this traffic from Salt Lake City to Ogden, and there interchanged with the Southern Pacific-Shasta Route, except that when the Oregon Short Line was in the hands

of a receiver, the Rio Grande Western worked with both lines, but while they worked with the Short Line, they did not desert the Southern Pacific route. The Southern Pacific desired them to work with that route so far as they could, and, in fact, desired them to work altogether with it, but they worked with both lines. (Folios 3943-4.) Mr. Babcock also testified (Folio 3987) on cross-examination:

> "Q. Now the business from Salt Lake and Portland and the vicinity of Portland, was that the only business which the Denver & Rio Grande moved that way in connection with the Southern Pacific?
> A. No, through business.
> Q. Through business?
> A. With Colorado and beyond."

After defendants' counsel had called attention to the fact that the Shasta Route was a longer and harder route than the Short Line, Mr. Babcock testified, at Folio 3989, that he didn't recall that anybody ever lodged any complaint with him as to the time by the Shasta Route on such traffic as they handled.

It must be remembered that the distance from Portland to Salt Lake City is very great, even by the Short Line. It is about 900 miles, practically the distance between Chicago and New York, so that the movement of any traffic between these places is an important movement. It is by no means a short haul. The distance by the Shasta Route is only 400 miles further (Folio 3988), and as appears by the testimony, at Folio 3998, the distance to New York from Corinne, Utah, by the Union Pacific, the Northwestern and the Pennsylvania, is 2429 miles, while the distance to New York from Corinne, Utah, westerly over the Central Pacific, and thence around by the Sunset Route, is 4,775 miles; and still rates are equal on wool shipments,

as we have shown, and, in fact, most of the wool traffic along the Central Pacific line of the Southern Pacific moves that way.

Mr. Eccles, of Ogden, one of the most prominent men in Utah, largely engaged in lumbering in Oregon, ships his product from Hood River, which is 65 miles east of Portland, mostly into Utah and Idaho, and some into Nevada. That traffic moves to Nevada points solely by the Shasta Route, as no rates apply over the Short Line, although until within a year, it could be moved by the Short Line and Ogden, and thence west. (Folios 4010-11.) Thus this traffic is, by the consolidated management, forced west into Portland over the O. R. & N., and then around by the Shasta Route to points very close to Ogden.

Mr. Love testified that he handles Alaska salmon, sometimes through San Francisco, at other times through Portland. When it comes by Portland, it reaches Salt Lake over the O. R. & N., and through San Francisco by the Southern Pacific. (Folio 4048.)

Mr. C. E. Murphy, in the retail lumber business at Salt Lake City, testified that the Southern Pacific and Short Line agencies separately solicited business from his company before the agencies were consolidated, and that lumber at that time moved from Portland to Salt Lake both by the Shasta Route and the Short Line. (Folios 4309-11.)

Mr. Frank S. Murphy, wholesale lumberman at Salt Lake, wholesaling into Utah, Nevada and Wyoming, getting his principal supply of lumber from the vicinity of Portland, testified that at present his lumber all moves through

the Portland gateway over the O. R. & N. and O S. L.; that twelve or thirteen years ago he used the Shasta Route. He remembered when the Short Line and Southern Pacific had separate commercial agencies, and his business from Oregon was solicited by those agencies, the Southern Pacific by the Shasta Route and down over the Denver & Rio Grande from Ogden; the Union Pacific by the O. R. & N. and the O. S. L. (Folios 4324-5.)

Mr. Romney, in the wholesale and retail lumber business at Salt Lake for the last twenty years, testified that his lumber supply comes mostly from Oregon, considerable from the vicinity of Portland; that it now moves entirely over the O. R. & N. and Short Line, and formerly moved in part over the Shasta Route; that it is routed by the shippers as a rule. In his opinion, the shipments in many instances are slower than they were formerly. (Folios 4315-16.)

Mr. Adams, now the General Freight and Passenger Agent of the Spokane, Portland & Seattle Railroad, testified, at Folio 4416, that he remembered as a matter of common knowledge, that prior to the amalgamation of the Union Pacific and Southern Pacific interests, the lumber traffic moved from Portland to Colorado and Utah common points, both through Sacramento by the Southern Pacific, and by the O. R. & N. In 1902 the rates via Sacramento to Utah were withdrawn, and the rates applied only via Portland. The business was then solicited by way of Portland, instead of by way of Sacramento. (Folios 4416-17.)

Mr. McCusker testified (Folio 4486) that previous to the amalgamation, lumber moved from Portland to Salt

Lake usually over the Southern Pacific; that it also moved by the Short line and the O. R. & N., and that the traffic was the subject of competition at that time. He then testified:

> "Q. How was it as to Denver and Colorado common points?
>
> A. I think there was some business moved to Colorado common points. The lumber business I did not solicit, for the reason that arrangement was made with the mills as a rule. On some business I would see the mills. But I have solicited shingles that came from points on the Cowlitz River. I would solicit that from the Kellogg Transportation Company for Colorado points or Utah points. I am not positive about the Colorado points.
>
> * * * * * *
>
> Q. And did shingles move both by the O. R. & N., the Short Line and your route?
>
> A. Yes, sir.
>
> Q. And by Southern Pacific you mean what route?
>
> A. I mean by Sacramento and Ogden." (Folio 4487.)

Mr. Holman, who was connected for twenty-one years with a line of steamers running on the Columbia and Cowlitz Rivers, testified that they brought in shingles among other commodities, and what did not go to the local trade in Portland were shipped to Salt Lake and Denver over the O. R. & N. or the Southern Pacific, whichever the shipper desired. They moved both ways. They were handled by brokers in Portland, who would order the cars and give the routing to the railroad people themselves. (Folios 4591-2.)

Mr. Kelly, of the Booth-Kelly Lumber Co., a very large concern operating four mills in Lane County, south of

Portland, and whose testimony we will comment on in another connection, testified that he never had a very large business in Utah; that the Portland mills had that territory largely. (Folio 768.) Therefore, as it appeared by the testimony of the lumber men at Salt Lake that the bulk of the lumber shipped in there comes from Portland, it is apparent that this lumber traffic which was competed for by the O. R. & N. and the Short Line on the one hand and the Southern Pacific on the other, previous to the merger, was very important in amount, as it covered a very large part of the entire lumber consumed in the State of Utah aside from a great deal that went to Colorado. Mr. Kelly further testified, at Folio 777, that prior to 1901, when he routed lumber to Colorado by the Southern Pacific around by Sacramento, it moved from Ogden by the D. & R. G. and occasionally a car by the Midland.

Mr. Munroe, when called by the defendants, showed the value of the Shasta Route as a competitor of the Oregon Short Line by describing the competition made in connection with the Shasta Route by the Union Pacific at the time the latter company was in the hands of receivers, the Short Line receivership having been terminated and notice having been served on the Union Pacific receivers that it would demand a larger division of the revenue, coupled with the statement of its intention to open the Ogden-Provo gateways to the Rio Grande and its eastern connections; he said the receivers had been criticized by the Court for allowing to the Oregon Short Line as large a pro rate as had previously existed, and when a still larger division was demanded they put on a fast freight train from Council Bluffs to Ogden, making the time in 32 hours and 40 minutes running in connection with the Shasta Route of the

Southern Pacific. The result of this fast service over those routes resulted in the settlement of the differences between the Oregon Short Line and the receivers of the Union Pacific.

(Folios 6798 and 6799.)

Mr. Miller, the traffic representative of both the Southern Pacific and the O. R. & N., when called by the defendant, said (Folio 7509) that he did not know of lumber or other freight in any appreciable quantity moving to Ogden or Salt Lake from Portland by the Southern Pacific, but admitted that there was some movement to points on the D. & R. G. by that route But this testimony is unimportant in view of the direct evidence of dealers and Southern Pacific agents heretofore referred to; it further appeared by Mr. Miller's own testimony, Folio 7510, that while at one time the O. R. & N. had a rate in connection with the Southern Pacific to points west of Ogden, the same as the rate by the Shasta Route, those joint tariffs were cancelled, both systems being controlled by the same people in 1907, and that at the present time the lumber traffic from Portland and points south destined to any point on the Southern Pacific west of Ogden moves only over the Southern Pacific line by Sacramento or Roseville. The result of this to Mr. Eccles, as we have shown, is that he has to pay five cents over the Portland rate to move lumber from Hood River, a point east of Portland on the O. R. & N., to any stations along the Central Pacific line west of Ogden, as the traffic cannot go by the Short Line and thence west. It would seem idle for the defendants to argue that the Shasta Route in connection with the Central Pacific, is not in position to compete for Utah business, when having control of both lines, they force all the business up to the first station west

of Ogden by that route. At Folio 7512 Mr. Miller in response to his own counsel admitted that in 1898 seven per cent of all of the traffic from the east into Portland came by the Southern Pacific from Ogden through Roseville, in 1899 six per cent, and in 1900 six per cent. This is not simply a comparison with the Oregon Short Line and O. R. & N., but the percentage is based upon the whole movement by that line, the Northern Pacific, the Great Northern and the Sunset Route. He gives no figures as to the less than carload movement. He further stated on direct examination, Folio 7515, that the Willamette Valley finds its market for lumber in Utah, Colorado, Kansas, Nebraska and beyond. This traffic is, of course, competitive with that from Portland and points taking the Portland rate on the O. R. & N.

Mr. Miller, Folio 7531, admitted that the rates on lumber to Denver were the same at all times by the Southern Pacific Route to Ogden and the O. R. & N. and the Oregon Short Line, but he claimed that from 1897 until 1900 the rate to Salt Lake and Ogden was higher by the Southern Pacific than by the Union Pacific system. That he is mistaken about this is clearly shown by Complainant's Exhibit 192, which shows the tariff on lumber from Portland to Ogden and Salt Lake City by both routes was 37½c per hundred. That was changed on December 1st, 1900, by both routes to 40c a hundred, and remained at that figure until after the merger. The class rates were the same by both routes until May 15, 1901. The class rates by the Southern Pacific were cancelled as shown by this exhibit by Supplement 63 to I. C. C. tariff No. 1390. This, of course, was made after the merger when it was decided to force business by way of the O. R. & N. and the Short Line. There was a

misprint in this exhibit as to Class D. It is shown as 53c by the O. R. & N. and 63c by the Southern Pacific. All the other rates appear the same, and it is apparent that this is an error because of the relation Class D bears to the other classes. The fact that Mr. Miller was thus mistaken in his recollection about the lumber rate from Portland to Salt Lake and Ogden is further shown by his own figures, (Folios 7538-9,) in which he gives the movement of lumber to Utah and Colorado via Roseville for certain years up to 1897, in the latter year there being 1,157 carloads; he has consolidated figures for the movement of lumber from Southern Pacific points in Oregon to Utah, Colorado and California, in 1900 there being 6,578 cars, and in 1901 7,048. Of course if the rates were not uniform this large amount of traffic would not have moved in competition with the mills shipping over the O. R. & N. and Short Line. At Folios 7539 and 7540 he makes the erroneous statement in answer to a direct question, that the rate to Utah by the Southern Pacific was 40c per hundred, while the rate via the O. R. & N. was 37½c per hundred from 1897 to December 1st, 1900. The tariff Exhibit 192 (Page 3368 Record), as we have said, shows that on March 20, 1899, which was the earliest date given on this extract from the tariff, the rates were identical at 37½c.

Mr. Campbell, whose testimony was read into the record by the defendants, testified at Folio 8088, that lumber moved by both routes from Portland to Utah and points beyond; and in answer to defendants counsel, Mr. Campbell reaffirmed his testimony as to lumber moving from Portland to points east of Ogden by the Southern Pacific, and stated that it was chiefly destined to points reached by the Rio Grande roads. (Folio 8098.)

The law prohibits pooling, but in this instance, the management of the Southern Pacific and Union Pacific have gone far beyond a pooling of traffic moving over both lines; although the Southern Pacific is a common carrier, and although it owns a line between Portland and Ogden, it refuses to do any business over that line. It has taken out the rates and forced all this traffic which was formerly competitive, over the Oregon Short Line. At Folio 829, in connection with the testimony of Mr. McBride, there was introduced into the record a circular addressed to the agents of the Southern Pacific Company, Oregon lines and others interested, by Mr. Coman, the General Freight Agent, reciting that an understanding had been reached with the Rio Grande line to handle all business to and from points on the Oregon lines of this company interchanged with the Rio Grande Railway at Ogden via Portland and Huntington; and effective that day, the Sacramento route was closed for such business. The tariffs were amended in conformity therewith.

Mr. Miller testified fully about this matter. (Folios 843 et seq.)

From this testimony it appears that a treaty was made, by the terms of which traffic moving easterly from any point in Oregon north of Ashland, which is over 300 miles south of Portland, is to move north to Portland over the Southern Pacific line, and thence east over the O. R. & N and Oregon Short Line, and as part of that treaty no traffic is permitted to move to the east by way of Sacramento and Ogden. That line has entirely gone out of business, so far as business moving to Ogden and points east is concerned. This treaty gives the Southern Pacific on this

traffic its local rate into Portland, the O. R. & N. and Short Line and their eastern connections taking the balance. At Folio 855 Mr. Miller stated the exact arrangement that was made by which no traffic was to be permitted to move over the Southern Pacific line to Ogden. The arrangement between the Southern Pacific Company, the O. R. & N., the Short Line and Union Pacific companies, on traffic moving via Portland, is that the Southern Pacific shall receive for its haul to Portland, on traffic other than lumber, when destined to eastern points, 40% of the west of the Missouri River proportion of the through rate, subject to its local rate as a maximum. He said this arrangement was made between Mr. Sproule, Freight Traffic Manager of the Southern Pacific at San Francisco, and Mr. B. Campbell, Traffic Manager of the O. R. & N., both of whom were acting as subordinates of Mr. Stubbs. At Folio 857, he said that on lumber and its products the Southern Pacific received south of Portland 25% of the west of the Missouri River proportion of the through rate, subject to its local rates as the maximum, so that on its lumber business the Southern Pacific did not fare as well. While the management of these two lines has accorded this percentage to the Southern Pacific on the business originating on its own lines and which it is thus compelled to give up to its former rival, the Southern Pacific is utterly excluded from the competition that originally existed on shipments from Portland proper, where the great part of the lumber and other traffic originates. Counsel for defendants brought out with a great deal of pride, apparently, at Folio 869, that while the Sacramento route is closed, that merely involved a choice as to how the stuff should move from Portland to Ogden, and that after it reaches Ogden, it is as free to go over any route as it

ever was. As an interesting result of the working of this common ownership, we suggest that the Court read the whole of Mr. Miller's testimony (Folios 840 to 876). It shows how the entire business of the country has been parceled out between these former competitive systems by the traffic department in charge of both lines. The efforts of Mr. Miller to justify this statement are very interesting, and it might be said amusing. At Folio 860 he frankly admitted that in addition to the closing of the Sacramento gateway, the following agreement had been made:

> "Q. And so you gentlemen have parceled out the business of the country, have you, in that way; instead of competing for the business, you decided to have all the seaboard business, if possible, go by Sunset, and the other by Union Pacific?
>
> A. Yes, sir."

e. COMPETITION AS TO TRAFFIC BETWEEN SAN FRANCISCO AND PORTLAND.

The Southern Pacific is the owner of a line of railroad, as we have said, between San Francisco and Portland, commonly known as the Shasta Route. The distance between these points is in the neighborhood of 700 miles. The Oregon Railroad & Navigation Co. maintained, in connection with its lines of rail running from Spokane and Huntington to Portland, a line of boats from Portland to San Francisco. These boats carried a very large traffic, both passenger and freight, and were at all times, previous to the amalgamation of the Southern Pacific and Union Pacific, active competitors for business between Portland and San Francisco. The boats of the O. R. & N. on the Willamette River also brought into Portland commodities which were transhipped to San Francisco by the O. R. & N. boats. This traffic was competitive with the Southern Pacific rail line.

Mr. Montgomery, in charge of the traffic of the J. K. Gill Co. at Portland, testified that they buy goods in California, and that they come up from San Francisco sometimes by boat and sometimes by rail. (Folio 702.)

Mr. Ehrman, wholesale grocer, testified that they buy fruits and canned goods from California, and they have always come both ways, some by boat and some by rail. (Folio 708.)

Mr. McCusker testified, at Folio 726, that while he was not in the passenger department of the Southern Pacific, he knew there was competition on passenger business between San Francisco and Portland. He further mentioned

box shooks as a commodity which was solicited and moved both by the O. R. & N. and the Southern Pacific. (Folio 731.) He also instanced hides from the packing houses, which moved both ways to San Francisco, and were solicited by both lines. (Folio 732.)

At Folios 4483 to 4486 Mr. McCusker again testified with reference to the competition between the Shasta Route and the boat line, and particularly with reference to a war of rates lasting a part of two seasons, in which the rates got down to $2.50 and $5.00 by steamer, and $5.00 and $10.00 by rail, the $10.00 including Pullman berth; the boat rate included both meals and berth. During that war, freight rates between Portland and San Francisco by boat, went down to a dollar a ton, according to his recollection, and the Southern Pacific had in a rate of 12½ cents a hundred. At Folio 4484 he gave the following testimony:

> "Q. What was the reason that the Southern Pacific put in this very low cut rate at that time?
> A. To meet the competition of the boat lines."

He further explained that the cut rate by steamer was applied only locally between Portland and San Francisco, and that the Southern Pacific was obliged to put in its low rate to meet this competition, for the reason that traffic was being drawn to the ports from non-competitive points on the Southern Pacific, paying the local into San Francisco or Portland, and then moving by boat at a lower rate than the all rail rate.

Mr. Linn, Manager of the Oregon Furniture Manufacturing Co. at Portland, testified that previous to 1901 they shipped to San Francisco by both boat and rail; that he

preferred the rail, as it was more convenient. (Folios 749-50.)

Mr. Breyman, manufacturer of saddlery goods at Portland, procures his leather largely from San Francisco, and prior to 1901 there was competition for his shipments between San Francisco and Portland, between the Southern Pacific and the O. R. & N. boats. At that time he shipped largely by boat. Latterly, by rail altogether, on account of the very poor steamer service. (Folios 758-9.)

Mr. Jones, Freight Traffic Manager of the Southern Pacific at San Francisco, testified at Folios 1018-19, that there is an established differential at present between the boat line, which is now managed by Mr. Schwerin, and the Southern Pacific, and that whenever rates go up or down by one line, they automatically go up or down by the other. To show the state of mind of this prominent Southern Pacific official, it is interesting to observe Mr Jones' testimony in this connection (Folio 1019):

> "Q. So that if, as Mr. Schwerin testified yesterday, he found it necessary or advisable to advance the boat rate because the stevedores and longshoremen and the officers on his ships were demanding and receiving higher wages than they had theretofore received, your rail rates would go up automatically because of that fact, would they, because of this advance?
>
> A. Yes, sir.
>
> Q. Now, Mr. Jones, do you think that that is a fair proposition to the public, that because Mr. Schwerin has to charge higher rates because of increased cost of service, that your rail rates should go up without any corresponding increase in your expense?

A. Why yes, I don't see anything unfair about it."

Again, at Folio 1020:

"Q. Then, as I take it, Mr. Jones, the making of rates between here and Portland is something that involves no discretion on the part of the manager of the traffic department at all, but it is laid down as a general rule, and the rate clerk, any one of six or eight of them, wherever they happen to have jurisdiction, shoves the rate up and down automatically?

A. Unless he is instructed otherwise, that is the understanding. You see these rates are put in for the purpose of moving any traffic that may be tendered us. We have found by experience that it is better to have rates in force than to have our agents telegraphing us all the time for rates. Therefore they are fixed, as far as possible, and the basis is fixed."

The ludicity of this last answer, given by the naive Mr. Jones, and the manner in which he ignores the provisions of the Interstate Commerce Law concerning the publishing of tariffs as a reason for having fixed tariffs, is very striking.

Mr. Eccles, of Ogden, who, as we have stated, is largely engaged in lumber business in Ogden, testified, (Folios 4013-14), that he was familiar with the boat line that was maintained by the O. R. & N. between San Francisco and Portland, and traveled on it, and that he knew about competition between those lines in the days when the Southern Pacific and Union Pacific were separate. He testified that in that competition Mr. Campbell, General Traffic Manager of the O. R. & N. Co. in charge of the boats, put in a five dollar rate between Portland and San Francisco, including

berth and board, as well as transportation. The Shasta Route made a five dollar rate, including berth in a tourist car, and he traveled on both the lines during that time. That was going on for a long time and was advertised. He further testified (Folio 4014) that the O. R. & N. maintained light draft river steamers, and brought down grain and loaded it on their boats at Portland for San Francisco; that that came from territory also reached by the Shasta Route.

On cross-examination, at Folios 4040-42, Mr. Eccles again explained about this competition between the boat lines and the steamers and the classes of traffic that they hauled.

Mr. O'Reilly, who was in the traffic department of the Union Pacific and O. R. & N. at Portland from 1891 up to 1897, testified, (Folio 4334), that during the time of his employment he remembered the boat line run by the O. R. & N. between Portland and San Francisco, and the war of rates between that line and the Southern Pacific, which, according to his recollection, lasted for a year and a half, extending to both passenger and freight. Freight rates got as low as a dollar a ton on the boat line, and passenger rates got down to a five dollar fare. He also testified that the line of steamers run in connection with what is now called the Corvallis & Eastern Railroad, running from Yaquina Bay to San Francisco, participated in that competition, traffic moving by the rail line of the Corvallis & Eastern, then called the Oregon & Pacific, in connection with the Southern Pacific in the Willamette Valley and by the boat line from Yaquina Bay to San Francisco. He stated that the classes of traffic included in the competition between the Southern Pacific and the O. R. & N., and the

Corvallis & Eastern and connections, was south bound grain and potatoes, and north bound general merchandise. (Folio 4336.)

> "Q. During the time that you were connected with the O. R. & N., what classes of commodities moved between San Francisco and Portland both by boat line and Southern Pacific Railroad, the Shasta Route; what were the chief articles of commerce?
>
> A. The chief articles of commerce were grain and farm products generally, south bound, and merchandise, more particularly in the way of groceries, north bound.
>
> Q. Did it move both ways—both boat and rail?
>
> A. Yes."

Mr. O'Reilly further said, (Folio 4344), that at one time the O. R. & N. had three boats in this service, and that there was a four-day service; that is, a boat sailing every four days. That was afterwards changed to a five-day service. As shown by other testimony, at present there is only a seven-day service. On cross-examination, Mr. O'Reilly stated that the rate war between San Francisco and Portland between the steamboat lines and Southern Pacific, occurred during the time that Mr. McNeil was receiver of the O. R. & N., and he said:

> "Q. Do you know what the purpose of that rate war was?
>
> A. My recollection is that it was precipitated by the Southern Pacific, if I remember correctly, through a determination to compete for San Francisco and Portland traffic which previously they had engaged in." (Folio 4349.)

It appeared by the testimony that this rate war terminated, as all rate wars do, in a settled condition of rates, the boat line having a differential, as testified to by Mr. Jones. As to subsequent rates, Mr. O'Reilly testified as follows, (Folio 4362):

> "Q. Now after the settlement of this boat line and railroad rate war that you have spoken of, the boat line and the Southern Pacific each maintained their agencies here, didn't they, and were each soliciting business?
>
> A. Yes.
>
> Q. And endeavoring to get what business they could at the established rates?
>
> A. Yes.
>
> Q. That continued as long as you were connected with them?
>
> A. As long as I was in the service.
>
> Q. And in that way they were competing with each other for the business?
>
> A. Yes."

It further appeared by Mr. O'Reilly's testimony that the Willamette River boats that were formerly run in connection with the O. R. & N. rail and steamship lines in competition with the Southern Pacific for business originating in the Willamette Valley, have been withdrawn. They were in active operation up to 1901, and gradually sagged off until last fall, when they finally petered out. (Folio 4368.)

Mr. Ward, now General Agent of the Pacific Coast Steamship Co. at Seattle, and from 1894 to 1901, with the O. R. & N. at San Francisco, for the last three years of that time General Agent, testified at Folios 4387 et seq., with reference to the competition for different classes of

traffic carried on between the O. R. & N. boats out of San Francisco, and the all rail lines. At Folio 4390, he testified that after the war between steamers and the rail line between San Francisco and Portland, a differential was established of 6c a hundred on less than carloads, and 3c on carload lots. At that time the regular schedule for the ships was five days, and an additional freighter was run once in a while when cargoes were offered. Two ships were the regular steamers, and two others were held in reserve. He further stated, (Folios 4390-1), that this steamer and rail war lasted for about a year and a half, that the steamer rates got down to a dollar a ton weight or measurement, ship's option, possibly to 75c, on such commodities as salt, once in a while. The Southern Pacific rail rates were down to a basis of two dollars a ton, dead weight, which would be 10c a hundred pounds. The war extended to passenger as well as freight business. The O. R. & N. ships could carry between 200 and 300 passengers each. (Folio 4391.) He further testified at Folios 4392-3, that the war of rates was started by the O. R. & N. Co., and continued for some time before the Southern Pacific became involved in it. He then said:

> "Q. How long were the O. R. & N. fighting the other boat line before the Southern Pacific took a hand cutting rates?
>
> A. I am unable to give even an approximate estimate on that. I remember that we were fighting for quite a while before the Southern Pacific reduced their rate to the two dollar basis, and we fixed up the schooner lines, but the Southern Pacific still kept that rate in and we had some further touble with them."

He agreed with Mr. Eccles about the passenger rates that were in during that war, and further testified, (Folio 4393):

> "Q. Now during the time that that war was on between the steamship lines before the Southern Pacific got into it, do you know whether traffic moved by rail from interior points to San Francisco and thence up by boat?
>
> A. Yes, there was some of it, I expect, I know there was.
>
> Q. From Southern Pacific territory?
>
> A. Yes."

On cross-examination, further explaining about the differential that existed after the rate war, he stated that the steamer line had a rate of twelve dollars, first-class, including berth and meals, and the Southern Pacific a net rate of seventeen dollars, which included a Pullman berth, charging the passenger $25, and rebating him eight dollars at the end of the journey. (Folio 4396.) The reason for this rebate is apparent. The Southern Pacific wished to hold up its passenger rates to interior points, where they were not in competition with the boat, and hence charged the $25 rate to Portland, rebating eight dollars. At Folio 4397 he stated that the south bound cargoes consisted of Oregon and Washington produce, such as potatoes, grain, box shooks, and salmon. Mr. Ward further said (Folio 4404), that during his service, the time of the boats between San Francisco and Portland was from 55 to 60 hours, the passenger schedule by rail 36 hours, with a train a day each way, the boats having a five day service. He further testified (Folio 4405), that the heavier movement of freight was southbound, but the business northbound was higher class, so that the revenue was greater than on southbound business on an average.

Mr. Adams, General Freight & Passenger Agent of the Spokane, Portland & Seattle Railway, formerly Assistant General Freight Agent of the O. R. & N., and previous to that Traveling Freight Agent of that company, testified, at Folio 4413, that it was not his understanding that there was a fixed differenial previous to 1902 between the boat line and the Shasta Route, although there was a difference in rates, and the rail rates were higher than the water rates on the bulk of the traffic. At Folio 4414 he testified in reference to the O. R. & N. boats on the Willamette River, and the points they touched in common with the Southern Pacific Railroad, such as Corvallis, Albany, Independence, Salem and Oregon City, and at times places higher up the river than Corvallis. These steamers had a daily service and brought in farm products and paper from mills at Oregon City, a large quantity of which went on to San Francisco by the boat line. At Folio 4419 he states that he remembers a time when there was a three and four-day boat schedule, and that that was reduced to a five-day schedule, which continued as long as he was connected with the company.

It is admitted by the pleadings that the boat line formerly conducted by the O. R. & N. Co. is now conducted by the San Francisco & Portland Steamship Co., the stock of which is owned by the O. R. & N. Co., and Mr. Adams testified that that line has only an irregular service.

At Folio 4444, Captain Graham, who runs a line of boats on the Willamette River, testified that the output of the paper mills at Oregon City goes mostly to San Francisco, either moved by a small boat run in connection with the O. R. & N., which is the only boat they have left on the river to Portland, and thence by boat to San Francisco, or

taken across the river to a station called Pulp on the Southern Pacific, and moved to San Francisco by rail. It further appeared by Captain Graham, that even now flour is moved from Corvallis mills to San Francisco, part of it taken down to Portland by Captain Graham's boats, and thence moving by boat, and the balance moving to San Francisco by the Southern Pacific. (Folio 4448.)

On re-direct examination, speaking about the diminution of traffic on the river, he stated that in former days there was more effort made to get traffic to move out of the Willamette Valley by river; that the O. R. & N. were very active in endeavoring to get business to move that way. (Folio 4450.)

Mr. Sweek, now engaged in the salmon packing business, but who, from 1898, was for several years employed by the O. R. & N., and between two and three years of that time in the office of Mr. Campbell, the Traffic Manager, testified, (Folio 4461), that there was competition at the time he came to Portland, (1898), between the O. R. & N. boats, and the Shasta Route of the Southern Pacific on business between San Francisco and Portland.

Mr. Baumgartner, up to the present year, from 1898, Portland agent for the California & Oregon Coast Steamship Company, operating a line of freight steam schooners between San Francisco and Portland, testified that that company was organized in 1898, with one boat, and added about a boat a year until it had a fleet of nine steamers. In 1899 there was an agreement in force with the O. R. & N. by which the latter company subsidized the California & Oregon Coast Co. to maintain rates. (Folio 4508.)

This is especially important, in view of the fact that this was the only other regular line of boats running between these ports, and some attempt has been made in cross-examination to have it appear that the real competitor of the O. R. & N. was not the Southern Pacific, but this other line of boats. These boats it will be seen were not large fast passenger boats like the ones operated by the O. R. & N. but only steam schooners.

Mr. Baumgartner testified that the merchants of San Francisco and Portland both wholesaled into the Eureka and Coos Bay regions. The fact that they wholesale into the same territory furnishes a reason why rates from the east are maintained at the same figure into Portland over the Union Pacific system, and into San Francisco over the Southern Pacific system, as it has been necessary for these respective railway systems to place their consignees on an equality in the ability to distribute.

Mr. Hurlburt, in 1890 and 1891 Assistant General Passenger Agent of the Union Pacific at San Francisco, in which latter year he came to Portland as Assistant General Passenger Agent of the Union Pacific in charge of the O. R & N. lines, and when the latter company went into the hands of a receiver, in 1894, becoming General Passenger Agent under the receiver, continuing as General Passenger Agent after the reorganization until 1901, testified with reference to the situation when he was in San Francisco (Folio 4526):

> "Q. At that time, what was the situation as between the O. R. & N. boat line between Portland and San Francisco and the Southern Pacific line between Portland and San Francisco?
>
> A. The conditions?

Q. What were they doing? Were they each trying to get the business?

A. Sure."

He testified that when he was in Portland they were moving all the passengers they could get by the boats, and the Southern Pacific all they could get by the rail line at an agreed difference in rates; that the boats went every five days, which was a handicap as against the rail line, but the reduced rate at which they were able to do business in some measure compensated for the infrequency of the sailings as against the daily service. At certain seasons of the year they brought boatloads full of people. (Folio 4529.) He testified with reference to the rate war between the boat line and the Shasta Route (Folio 4536), making the interesting statement that rates got so low that it was cheaper to pay fare than to ride on a pass. At Folio 4531 he stated that after the rates were restored at the end of the rate war, there was no cessation in the efforts of his company and the Southern Pacific to try to influence passengers to take their respective routes to San Francisco and return; each was trying to get the business. At Folio 4532 he said that at the time he quit the service, in 1901, they could carry 300 cabin passengers on the Columbia, although 350 was allowed. There were also steerage accommodations for about 100 passengers, and on the State of California about the same number of passengers could be carried, and on the steamer Elder about 225. From April to November these boats ran full. (Folios 4532-3.)

On cross-examination he said that the opposition boats between San Francisco and Portland prior to 1901 were not real passenger boats, so he paid no attention to them from a passenger standpoint. His company maintained

agencies at Salem and Albany, routing passengers through on the Willamette River boats, and thence over the rail and boat lines of the O. R. & N. (Folios 4533-4.)

Mr. Kelly testified that he was in charge of the transfer of freight from the steamers and river boats to the cars and the delivery and receipt of freight on the docks at Portland for the O. R. & N. from 1894 to 1901. The Willamette River boats coming from Salem, Albany, Corvallis, McMinnville, and sometimes from as far as Eugene, brought in a great deal of traffic which was carried by the boat line to San Francisco. This traffic consisted of potatoes, onions, paper and some prunes. (Folio 4569.)

On cross-examination he testified that in 1895-6, there were three-day sailings between Portland and San Francisco, and from 1896 down to the time he left there were five-day sailings, and in some cases four days. (Folios 4571-2.)

On re-direct examination (Folio 4573) he says Portland has grown 100,000, and the territory tributary to Portland increased a great deal between 1897 and the present time, and there is a much larger volume of traffic now moving between Portland and San Francisco and in every other direction, and still the boats now run only every seven days, instead of every three or four days. This testimony indicates that less effort is being made to send traffic that way and more effort to send it by rail.

Mr. DuFlon, representative of some Calcutta and San Francisco jute houses, says he was in the steamboat business between San Francisco and Portland for about five years, beginning in 1892. He testified (Folio 4577) with reference to the rate war, saying that his line met the rate, and at the time it was fixed up he had a conference with

the representative of the O. R. & N., and made a contract to which the California & Oregon Coast Co. succeeded, being the subsidy contract referred to by Mr. Baumgartner. (Folios 4580-81.) That in those days the O. R. & N. made contracts with large shippers to handle all their business between San Francisco and Portland, and that all classes of traffic moved up and down by boat. The principal commodities moving up were salt and sugar, which was a very large business, California canned goods and leather. (Folio 4581.)

Mr. Paulsen, for ten years with the O. R. & N. Co. in the traffic department, from 1897 to 1907, testified with reference to the more frequent schedule of boats in former years, and to the rate war, and as to the commodities moving to San Francisco by the boat line, including box shooks from the factories in Portland. (Folios 4594-5.)

Mr. Connor, now in private business in San Francisco, and from July, 1894, to February, 1898, General Agent of the O. R. & N. at that city, testified very fully with reference to the origin and termination of the rate war between the O. R. & N. and the Southern Pacific, at Folios 4764-6. It appears that the other boats were cutting rates at the time he entered the service of the O. R. & N. in July, 1894, and he made special rates to take the traffic from them until the flat rate was established, first at $1.50, and afterwards at $1.00 a ton, weight and measurement. Mr. McNeill, receiver of the company, on visiting San Francisco, found that the steam schooners that were competing for the business needed some north bound cargo, on account of the weather conditions, as ballast for their boats. That resulted in the subsidy contract. While this fight was go-

ing on, the Southern Pacific Shasta Route had reduced its rates to 12½ cents per hundred, all classes, with two different rates on sugar and salt of 7½ cents a hundred, or $1.50 a ton. When the steamer lines had settled matters so that they were ready to advance or re-establish the old rate, they notified the Southern Pacific and the O. R. & N. river lines on the Willamette River. There were then certain negotiations between the Southern Pacific and the O. R. & N., which led to the Southern Pacific advancing its rail route to 51 cents, first-class, on less than carload lots, as against 45 cents for the boats, maintaining a differential between the rail and ocean line of 6 cents a hundred, and 3 cents a hundred on carloads, which differential was in existence when he left the company. He further testified that the only way he had of knowing about the amount of freight moving by the Southern Pacific was by having his solicitors go to the Southern Pacific freight sheds and watch the marks, and ways of hauling and one thing and another, and they would report at times carloads assembling in the Southern Pacific freight sheds, or cargoes of canned goods for Portland. This, of course, is the natural thing for competitors to do, and is like the efforts that Mr. Munroe testified he made to find out through his agencies what his competitors were doing, and what traffic they were taking.

At Folio 4768 he further explained about the situation that had existed as to competition between the O. R. & N. boat lines and the Southern Pacific, saying that there was competition between the boat lines and the Southern Pacific from the Willamette Valley into Portland, and some through to San Francisco: that is, freight was moving from San Francisco to Portland, and thence to destination in the Willamette Valley by boat in competition with the rail

line, and the differences that the Southern Pacific insisted on having adjusted related to that competitive traffic, and the railroad refused to raise its rail rates, so that the ocean rates could come up until they had made some kind of an agreement about the Willamette Valley traffic. What it was he did not know.

At Folios 4770-71 he testified that the O. R. & N. boats carried a very heavy passenger business during pleasant weather, and that they made efforts to get that business; that when he first joined the company three ships were being used, giving the three-day service. One was withdrawn, and the service was changed to five-day service. The Southern Pacific was running a passenger train a day between San Francisco and Portland. He testified to the cutting of the passenger rate by the boats, and also by the Shasta Route, and explained with reference to the railroad tickets:

> A. I remember the rate as it was cut was under the rebate system. A man would pay a regular fare, and on arrival at Portland would cash his rebate coupon, making the net rate less than the regular rate, which would prevent the scalping of the ticket or the use of it to intermediate points. The passenger had to go to Portland to get the benefit of the cut-rate."

He further explained, at Folio 4772, that this rebate was not in any way a secret one, but was a method employed by the Southern Pacific to protect their rates on interior business, where they did not meet the competition of the boats.

At Folio 4773 he testified that a good many of the commodities moving from San Francisco, the so-called California products, were not produced in San Francisco, but were brought in by rail lines or by Sacramento River water

lines, and moved to Portland over the steamship line. This traffic was strictly competitive with the Southern Pacific all rail route. Mr. Connor also testified (Folio 4774) that on the Southern Pacific tariff which was published at the time of this war, a notation appeared reading as follows, as near as he could recollect:

> "The rates herein named are not considered reasonable or fair, but are forced by unreasonable competition on the ocean, and will apply between or to and from points named only, and not to or from intermediate points."

Objections were made that this was not the best evidence, and two tariffs were procured from the Interstate Commerce Commission, being Complainant's Exhibits 184 and 185, appearing at Folios 5559 and 5560.

Exhibit 184 is the tariff effective December 1, 1895, applying both ways between Portland and San Francisco, being a flat rate of $2.50 a ton on the first four classes, and a rate of $2.00 a ton on the other six classes, and upon this tariff there is a note as follows:

> "These rates are not regarded as fair compensation for the service, but are forced by the excessive competition of ocean lines."

Complainant's Exhibit 185 superseded the tariff on Exhibit 184, and became effective December 15, 1895, and refers to north bound traffic only from San Francisco to Portland, and Albany, Oregon, and points between. Albany, it will be remembered, is about at the head of navigation to the Willamette River boats. This tariff contains an identical notation with the one just quoted. Both these tariffs are signed by Mr. Gray, the General Traffic Manager

of the Southern Pacific at San Francisco, by Mr. Rogers, Assistant General Freight Agent at Portland, and by Mr. Smurr, the General Freight Agent at San Francisco.

Mr. Connor, on cross-examination, testified that the 12½-cent rate by weight, put in during the steam and rail war, by the Southern Pacific, was even lower than some of the rates on the boat at a dollar, because the steamship rates were by measurement as well as weight. (Folio 4836.)

North bound the cargo carried by the O. R. & N. consisted of sugar, salt, canned goods, dry goods, general merchandise, and California products; south bound, of grain, flour and agricultural products, some lumber, some iron, paper and potatoes. He said they had a lot of paper from the Willamette mills. (Folio 4838.) It will be recalled that the testimony at Portland showed that this paper traffic was divided with the rail line.

Mr. Toll, for many years in the traffic department of the Southern Pacific at San Francisco, testified (Folio 4854) that the memorandum on the Portland tariffs, that the rates were unremunerative and were forced by excessive water competition, was dictated by Mr. Sproule. He testified, at Folio 4855, that there was a commodity rate on sugar; he thought possibly one on salt, but very few commodity rates between San Francisco and Portland.

Mr. Havens, Vice President of Murphy, Grant & Co., wholesale dry goods, at San Francisco, testified that they wholesale through California, Oregon, Washington, Idaho, Arizona, New Mexico and Nevada. At Folio 4918 he testified that on shipments to Portland their traffic during all his connection with the business, which was since 1878, has

moved boat or rail, depending on the way the customer ordered it routed, but it has moved both ways.

Mr. Cooper, Assistant Manager of the Pacific Coast Steamship Co., with which he has been connected since 1887, testified that the O. R. & N. boat service between San Francisco and Portland was formerly a sailing every five days. (Folio 4932.) At Folio 4934 he said that at the time of the rate war between San Francisco and Portland the rates were brought down to Puget Sound points over the Pacific Coast Steamship Co. on interior business; that is, the lines operating via Seattle and Tacoma had to equalize the rates via Portland, and the Pacific Coast Steamship Co. had to participate in that effort.

At Folio 4942, on cross-examination, he testified that the rates by water lines between San Francisco and Portland have been advanced during the last year or two.

Mr. McEwing, who was Soliciting Agent of the O. R. & N. in San Francisco from 1898 to 1901, said that the boat line had the best of it as to business between San Francisco and Portland; that the Southern Pacific got what they could. This was because of the differential rate. (Folio 5068.)

Mr. Michaels, of Langley & Michaels, wholesale drugs, who has been connected with the business since 1886, stated that formerly they shipped to Portland and Oregon points, and that traffic moved by both boat and rail, more largely by boat. Four or five years ago they used the rail more than the boat, because the service was better, and they got goods into Portland in about three or four days, while last year it would take two weeks. (Folios 5090-91.)

Mr. Rumpf, in charge of the traffic of the California Wine Association, testified (Folios 5103-4) that they had shipped to Portland both by rail and boat, although they have not shipped by rail for the last five or six years, and those shipments were made only when the consignee favored the all rail shipments.

Mr. Chapman, Traffic Manager of the Pacific Hardware Co. for the last two years, testified that now his company ships to Portland both by the Southern Pacific Railway and by the San Francisco & Portland Steamship Co., owning the O. R. & N. boats. (Folio 5164.)

Mr. Campbell, whose testimony was read into the record, although he stated that he did not regard the Southern Pacific and the boat line as competitors from Willamette Valley points because they did not make the same rates, when examined with reference to business between Portland and San Francisco, stated that the two lines were competitive. At Folio 8075 he testified that there was a large passenger traffic between Portland and San Francisco by the boats of the O. R. & N. Co., and also passenger traffic between the same points by rail. He then testified:

> "Q. And as to that business the line of steamers that was run by the O. R. & N. and the all rail route of the Southern Pacific were strictly competitors, weren't they?
>
> A. They were competitors."

He again testified, Folio 8107:

> "Q. Now, Judge Lovett was asking you if the matter of travel between San Francisco and Portland was not a matter of individual choice; that is,

as to whether passengers would go by boat or rail. Both lines were soliciting passengers, were they not?

A. Yes, sir.

Q. And got all the business they could?

A. Yes."

That the competitive business between Portland and San Francisco is very substantial is shown by the statistics introduced in connection with Mr. Stubbs at Folios 6659 to 6665, Defts' Exhibits 46 and 47. It is admitted that the Southern Pacific earnings on Exhibit 46 are estimated. This exhibit shows earnings of over $327,000 on local freight business between San Francisco and Portland divided about two-thirds to the steamship line and one-third to the rail line. Defendants' Exhibit 47, introduced in connection with Mr. Stubbs' testimony, at Folios 6661 to 6664, refers, as stated by Mr. Stebbins, the Auditor, at Folios 7667-8, to business between the Willamette Valley and San Francisco, and does not include any movement in or out of the Valley to points east, although the heading of Exhibit 47 is somewhat misleading. This exhibit shows Union Pacific earnings of a little over $120,000, and Southern Pacific earnings of a little over $146,000. On the exhibit it is shown as a little over $12,000 per month, which being multiplied into the year would make a little over $146,000. There is a deduction of $83,000 as a non-competitive, from the total of the Union Pacific earnings. This is explained by Mr. Stubbs at Folio 6662, as the business representing the tonnage to and from the paper mills at Willamette Falls, 15 miles above Portland, which he states are on the west side of the river and away from the reach of the railroad, and that the railroad has not been able to take any of that

business. That Mr. Stubbs is mistaken about this is shown by the testimony of Captain Graham, who operates a line of boats on the Willamette River, at Folio 4444. He testified, in answer to Mr. Cotton, counsel for the defendants, that this paper traffic was divided, some of it moving by boat to Portland, and thence by boat to San Francisco, the balance being taken across the river by boat to Pulp, a station on the Southern Pacific, and there loaded on the Southern Pacific trains and taken down that way.

Therefore, on defendants' own showing from these two exhibits we have a competitive business from between San Francisco and Portland, and San Francisco and the Willamette Valley adjacent to Portland, of nearly $600,000 a year, the exact figure being $594,151.74, of which $337,341.94 represents the O. R. & N. steamship earnings, and $256,809.80 represents the rail earnings. It will be remembered that this large total does not include the passenger traffic. Although the rates have since been increased according to the testimony, still, if computed upon the basis of rates put in force at the end of the steamship war, it is apparent that the passenger earnings by the respective lines amount to a very large sum. The testimony shows that previous to the merger the boats never ran less frequently than once in five days. They sometimes ran every three days, and at times every four days. It appears that from April to November, eight months of the year, the boats ran full and their capacity was from 300 to 350 first-class passengers, besides 100 steerage. Assuming that they ran, however, only once in five days in each direction, we would have twelve trips a month, six from Portland to San Francisco, and six from San Francisco to Portland, or in the eight months from April to November, 96 trips. Computed only at the 300 first-class passengers that would make a total

of 28,800 passengers during that period, which at a twelve dollar rate, which was the one fixed at the end of the steamship war, would produce a total revenue of $345,600. Making a most conservative addition to that amount for the first-class traffic during the balance of the year, and the steerage traffic during the whole year, would indicate a total passenger revenue accruing to the O. R. & N. boats of upwards of $400,000 per annum. Mr. Stubbs testified that the Southern Pacific ran two trains per day each way loaded to the guards. That would be a total of 120 trains per month, or 1,440 trains per year. A very small train loaded to the guards would carry at least 50 passengers, which would be a total of 72,000 passengers for the year. This is undoubtedly a very conservative estimate from the testimony. The rate of fare was then $18, which included a Pullman berth. Deducting from that $5 the value of the berth, according to the testimony, would leave a net revenue of $13 a passenger, or on 72,000 passengers we have total passenger earnings accruing from the Southern Pacific on business between San Francisco and Portland of $936,000 per year. This is no doubt an under estimate, in view of the testimony of Mr. Stubbs as to the way the trains were loaded. Adding to this $400,000 as the steamship earnings on passenger traffic, we have a total of $1,336,000 a year on this competitive business. The freight earnings shown above do not include any traffic destined to points beyond San Francisco on the south or beyond Portland on the north. In view of these figures, which are for the year ending June 30, 1901, it is hard to understand Mr. Stubbs' statement that the Southern Pacific had some years before competed for this business but had learned by experience that they could not do it. However, it appears by his cross-examination at Folios 6699 to 6701,

that he is not very clear about the competition having ceased, as he said that he would not desire to be understood as disputing the statements of soliciting agents that they had solicited this business, or of merchants who stated that their traffic had been solicited by these respective routes. At Folio 6702, he makes it pretty clear that he is merely advancing a theory. He admits that there are only the two routes between Portland and San Francisco; that he knew Mr. Hurlburt very well, and that Mr. Hurlburt had testified that the O. R. & N. boats with a capacity of 300 to 350 passengers ran full from April to November every five days; that then the Southern Pacific ran two through trains a day, and now three, and as Mr. Stubbs expressed it, all the engine could pull loaded to the guards. Still he thought there was practically no competition between the two lines. In this he differs from a great number of witnesses, including Mr. Campbell, defendants' witness, who was formerly Mr. Stubbs' assistant as Traffic Director of the consolidated lines. At Folio 6707 Mr. Stubbs admits that at the time of the steamship war the railroad rate between these points was put down to five dollars as an act of competition. Then after stating that the rail rates are now made irrespective of the ocean rates, when his attention was called to the testimony of Mr. Jones that the rail rates went up and down automatically with the boat rates, Mr. Stubbs admitted that Mr. Jones' testimony upon the question would be better than his; and the whole force of his declaration that there was no competition, is destroyed by the fact that he makes it apparent that he has some theory in his mind as to the meaning of the word "competition" as used in this law suit. At Folio 6708 he says:

"A. When I use the term 'competition' in all of this testimony, I am using it in the sense of a competition that is in restraint of trade. Remember that."

He does not anywhere define his definition, so we are left in the dark as to what particular theory he has in mind in giving testimony that apparently in places contradicts that of other witnesses. He repeats this statement as to the kind of competition he has in mind, whatever it may be, at Folio 6710:

"A. As I said to you, I am talking continually in this testimony with respect to competition that has the effect or might be reasonably supposed by a court or a jury to have the effect of restraining trade.

Q. Yes, I understood that was the sense in which you were using it. And it is your opinion that however much competition of one sort or another there may be, it is not that kind of competition?

9. That is what I mean."

With all his great talent, we doubt if Mr. Stubbs could explain how *competition* of any kind could restrain trade unless carried to such an extent by one of the competitors that it destroyed the other competitor, leaving the stronger with a monopoly. It is apparent that we will have to consider the testimony as to facts given by the witnesses, uninfluenced by Mr. Stubbs' legal conclusions.

Mr. Luce, General Freight Agent of the Southern Pacific, gave some testimony to the effect that his line did not solicit business to Portland. When his attention was called to the fact that Portland merchants had testified that their business was solicited by the Southern Pacific, he said he

did not doubt their statements. (Folio 7608.) The opinion of Mr. Luce, in any event, is of slight consequence compared with the direct testimony of witnesses and with the evidence offered by the defendants showing that, based upon freight earnings, about 43% of the entire business interchanged between Portland and the Willamette Valley on the one hand and San Francisco on the other, moved over the rails of the Southern Pacific.

Mr. McCormick, testifying with reference to passenger business, admited that he had never made the trip by boat, but said he understood that it was the worst trip on water except the one from Australia to New Zealand or from Havana to New Orleans, during the equinox, but that nevertheless, the steamship line carried a considerable business and the rail lines a good big business. (Folio 7813.) On cross-examination, Folio 7827, he said the scenery on the Shasta Route was thoroughly advertised to induce people to travel by that route, and that the boat line had scenery down the Columbia River, and sea weather outside.

f. THE SOUTHERN PACIFIC LINES AND THE O. R. & N. BOAT LINE, WITH THEIR CONNECTIONS, WERE IN ACTIVE COMPETITION FOR TRAFFIC BETWEEN SAN FRANCISCO AND POINTS IN MONTANA, IDAHO AND OTHER STATES.

Mr. Stubbs, in his interesting presentation of the Canadian Pacific differentials, which we have previously commented on, read from that argument, and testified concerning it, at Folios 3260 et seq., as follows:

> "Q. 'Well, will you read what you said at the bottom of page 94 beginning with the words, 'These American mixed rail and water lines?'
>
> A. (Reading): 'These American mixed rail and water lines do not exist merely on paper. They are open and in daily use, for both freight and passengers. They are effectively worked against the all rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah and Montana. Some of them are preferentially worked for San Francisco's trade with St. Paul and Minneapolis and points further east—the Great Northern works them.'
>
> Q. That will do. Now take your statement there that 'These American mixed rail and water lines do not exist merely on paper, but are effectively worked against the all rail lines for San Francisco trade with Oregon, Washington, Idaho, Utah and Montana.' How was that mixed rail and water line made up that worked into Utah from San Francisco?
>
> Mr. Lovett: Worked into Utah from San Francisco?
>
> Mr. Severance:: Yes, from San Francisco. He said they worked in competition with all rail lines for San Francisco business into those various states.
>
> Witness: : I presume it was the Navigation Company's steamers to Portland, O. R. & N., Oregon Short Line.

"It moved by way of Huntington and Pocatello for one route, and I think our line was entirely that way."

He further said it was brought from San Francisco by boat, and if the traffic moved by Ogden it went by the Central Pacific and the Short Line. The first route gave the Union Pacific system the entire haul to such Montana points as Butte, reached by the Short Line; and the competitive line, made up of the Central Pacific and the Short Line, gave the long haul to the Southern Pacific with a short haul to the Short Line from Ogden.

Mr. McBride testified that for five years previous to 1892 he was in the railway service at Butte, Montana, with the Rio Grande. He was asked (Folio 4376) how San Francisco traffic reached Butte and that region, and testified that it was either via Ogden by the Southern Pacific and the Oregon Short Line, or via the O. R. & N. boats to Portland, and then by rail via Huntington, or via Spokane and the Great Northern. On cross-examination, he testified (Folio 4377) that the preponderance of the traffic moved by the Southern Pacific and the Oregon Short Line, and that the O. R. & N. moved theirs by boat from San Francisco, sugar and beans principally going by that route.

Mr. Ward, who was from 1898 to 1901 General Agent of the O. R. & N. at San Francisco, testified concerning this Montana traffic, at Folios 4388-9, that the Montana common points included Butte, Helena, Anaconda, Silver Bow, and that Great Falls took the Montana common point rate; that all of these points had a common rate from San Francisco. He was asked how the traffic moved to these various points, and testified:

"A. They moved over the O. R. & N. steamer lines, and thence over the O. R. & N. rail lines and their eastern connections; moved by the Pacific Coast Steamship Co. and the Great Northern and Northern Pacific through Puget Sound; moved via the Shasta Route and the Northern Pacific; by the Central Pacific to Ogden, and the Short Line."

He further testified that the traffic moving to Montana common points by these various routes consisted very largely of California products such as sugar, canned goods and dried fruit; that there was no differential in force as between the water and rail lines and the all rail lines; also that traffic moved at an equality of rates between Boise and Pocatello, Idaho, by both routes; that is, by Ogden, or by the boat line to Portland, and thence by rail.

It appears from this testimony that the Southern Pacific by way of Portland, in connection with the Northern Pacific, was in competition with the Union Pacific system of rail and boat lines, without either system using any part of the other, but Mr. Stubbs' statement, at Folio 3266, to which we have previously referred, shows that the line by Ogden and the Short Line is equally competitive, for, as he says, each through line is a unit regardless of whether part of it may be used in forming another through line, even if it be a rival through line, and he illustrates it by reference to this particular California traffic, which we again quote, as follows:

"A. (Reading). If the Oregon Short Line running from Huntington to Granger and to Salt Lake, were deprived of a connection for the purpose of making a through line to San Francisco, via Portland, with the Union Pacific at Granger, or with the Rio Grande Western at Salt Lake City, because those roads respectively had physical con-

nection with the Central Pacific at Ogden, the Oregon Short Line would be deprived of all opportunity to compete for a share of the San Francisco traffic."

This matter was gone into quite fully on cross-examination with Mr. Ward, and it was developed that the same through lines are still in existence handling that Montana traffic. On re-direct examination, at Folio 4403, Mr. Ward testified:

"Q. As you understand it, the Southern Pacific with its connections, is still a competitor of the O. R. & N. boat line and its connections for Montana business?

A. That is my understanding, yes, sir."

Mr. Adams, General Freight and Passenger Agent of the North Bank Road, at Folio 4418, when asked as to how San Francisco business moved to Butte and common points in Montana, answered:

"A. There were many different routes. After the rates were established via Ogden in connection with the Central Pacific and the Oregon Short Line, that route was opened; there was an all rail route via Portland and the Northern Pacific, and there were the water routes to Portland in connection with the O. R. & N. and the Northern Pacific through Wallula; the Great Northern through Spokane, and the Oregon Short Line through Huntington; there were also routes open by steamer from San Francisco to Puget Sound, and thence in connection with both the Northern Pacific and the Great Northern."

He said he was familiar with the business, and it was a very considerable traffic and actively competed for by those

different routes. He further said (Folio 4419) that there was a very considerable traffic actively competed for by the Central Pacific in connection with the Short Line and the O. R. & N. boat and rail lines into the territory between Huntington and Pocatello on the Short Line. On cross-examination, at Folio 4422, he was asked about the routes to Montana from San Francisco, eliminating the line via Ogden, composed of the Southern Pacific, Central Pacific division, and the Short Line, and stated that the routes that had always been open were first, the Shasta Route to Portland, thence from Portland over the Northern Pacific via Tacoma, the O. R. & N. boat line to Portland, thence to Wallula over the O. R. & N., thence to Montana via the Northern Pacific; third, the O. R. & N. boat line to Portland, thence to Spokane over the O. R. & N., and thence to Montana over the Great Northern. Also the two lines by boat to Puget Sound and thence to Montana over the Great Northern or the Northern Pacific, and that those routes were open during all the time that he knew anything of the history of the traffic from San Francisco to Montana common points.

Mr. Kelly testified that when he was on the dock at Portland freight was received from San Francisco over the O. R. & N. boat line going to Butte and other Montana points, consisting of sugar, canned goods and merchandise, that moved out of Portland by Spokane and the Great Northern, some of it via Wallula, Northern Pacific, and some via the Short Line and Huntington. (Folio 4571.)

Mr. Connor testified that when he was General Agent of the O. R. & N. at San Francisco, they carried traffic from San Francisco to Montana points in connection with their

northern rail connections, with which he had through rates and divisions, the Northern Pacific and Great Northern, and for some Montana points by the Short Line; that the traffic moved out of San Francisco by boat, and was transferred to rail at Portland. (Folio 4769.) He was then asked as to whether the Southern Pacific participated in that traffic, and replied:

> "A. It had a line via Ogden in connection with the Utah & Northern, and what amount of business they got that way I don't know, but I presume they got their share, because occasionally, now and then, we learned about a car going that way. Of course I tried to get any we could."

He further stated that the classes of business moving to Montana points from San Francisco consisted of nearly all the California products like wine, dried fruit, sugar, and canned goods, and that there was no differential in favor of the rail line. At Folio 4773 he was asked whether the solicitation of business to Montana points was active on the part of the various lines, and he replied that, generally speaking, he would say that it was, on an equality of rates, and the ocean line had to assume the marine risk on the ocean. While Mr. Connor stated that the Southern Pacific were attempting to route their business by Ogden, he said it could also go by way of Portland and the Northern Pacific, as they had divisions in by that route. (Folio 4832.) Mr. Connor further testified (Folio 4843):

> "Q. How about business to Montana points? You stated you were looking after that pretty carefully. What steps did you take to find out whether the traffic was moving by that route—the Ogden route, to Montana points?

A. Well, we would have a man go to the Southern Pacific freight sheds every day, maybe once or twice a day, meander around, and see what he could find out in the way of marks.

Q. And when he found stuff going that route to Montana, did he always know what those marks meant?

A. If we could not get it from the shipper, we would telegraph our connection at the other end of the line and get him to work on the consignee and try to get a routing order, * * * for subsequent shipments, or maybe this one, if they hadn't got too much of it hauled.

Q. Get it away from them if you could? That was what you were here for, wasn't it?

A. Practically.

Q. Did you find also that in those days the Southern Pacific agency here in San Francisco was on to its job too?

A. They were pretty active on that Montana business."

Mr. Toll, for many years with the Southern Pacific in San Francisco, was asked (Folio 4854):

"Q. What do you know about competition on Montana and Idaho business before the amalgamation?

A. The competition was rather keen on Montana and Idaho.

Q. How did the O. R. & N. move the traffic, and how did the Southern Pacific move the traffic?

A. The O. R. & N. from San Francisco moved traffic by boat from here to Portland, and then through by rail; to points reached by their own line it went rail from Portland. Their connection with the Northern Pacific was at Wallula, and the Great Northern at Spokane.

Q. How did the Southern Pacific move their business?

A. The Southern Pacific moved the business both ways, both by Portland and by Ogden, but the majority of the freight moved by Ogden.

Q. When it moved to Montana points by Portland, how did it proceed from there?

A. It proceeded from there either Northern Pacific or O. R. & N."

Mr. Clifford testified that previous to the amalgamation he was for some time the agent of the Union Pacific at Butte; that the Southern Pacific had a traveling freight agent there; that the Southern Pacific man was working east bound California traffic into Montana, and that the business from San Francisco to Butte was quite a tonnage; that sugar was one of the principal commodities moved from California; also canned goods, beans, dried fruit, citrus and deciduous fruits; that the competition for that business between the O. R. & N. and the Southern Pacific agencies was very active; that the preferential route of the Southern Pacific was by Ogden, but they also moved business via Portland by the Shasta Route, and the O. R. & N. worked by their boat line and the long haul to Huntington or Spokane. The divisions were in through all the various gateways during the time he was there. (Folios 4905-7.)

Mr. Cooper, of the Pacific Coast Steamship Co., testified that his company, in connection with the Northern Pacific and Great Northern, has, for the last fifteen years, participated in business from San Francisco to Montana points; that the lines that are competitive for that business are the Southern Pacific via Ogden, and the O. R. & N. line by the Portland gateway, and that it has moved by the Port-

land gateway both boat and rail and all rail, and the business has been solicited all those years. (Folios 4936-7.)

At Folio 4946, when asked whether business moved through the Portland gateway by the Southern Pacific, he answered:

"A. To a large extent, yes."

Mr. McEwing, now Traffic Manager of Dunham, Carrigan & Hayden, formerly solicitor on the street for the O. R. & N., from 1898 to 1901, testified that it was a part of his duty to solicit business to Montana points; that he solicited preferably through Spokane in connection with the Great Northern or the Short Line, by Huntington, or by the Northern Pacific by Wallula, and moved the traffic to Portland by the boat line; that the Northern Pacific was engaged in competition for that business, preferably by Tacoma or in connection with the O. R. & N. by Wallula, and the Southern Pacific by way of Ogden, and some business through Portland in connection with the Northern Pacific; that the nature of the traffic was California products, wine, canned goods, dried fruit, sugar and salt, principally, and that the competition between these different routes was an active one for the business on an equality of rates. Traffic destined to Boise was worked by the O. R. & N. by Portland, and by the Southern Pacific by Ogden. (Folios 5067-8.)

Mr. Rumpf testified (Folios 5102-3) to making shipments by these various routes to Montana, for the California Wine Association.

Mr. Wolff, for many years a dealer in canned goods and dried fruits on a very large scale, testified that he has

shipped canned fruits and canned salmon from San Francisco to Montana points; that the business now moves entirely via Ogden; that years ago, before the Southern Pacific and Union Pacific came under one management, the buyers used to favor shipments via Portland, thence over the Northern Pacific and the O. R. & N., but he always favored shipping by Ogden, as there would be no transfer; it would go through in the original car. (Folios 5121-2.)

Mr. Melvin, Traffic Manager of the California Fruit Canners' Association since 1906, testified that his association ships canned goods and dried fruit to Montana; that it moves by the Portland gateway and the Ogden gateway, and when it moved by the Portland gateway it moved both by the O. R. & N. and the Short Line, or the Northern Pacific, or by rail to Portland, and thence on by rail in connection with the O. R. & N. and the Northern Pacific; and they have also made shipments by Ogden; that the Union Pacific organization works both routes at present, by Ogden in connection with the O. S. L., and the Portland route in connection with the O. R. & N. (Folios 5138-39.)

Mr. Miller when called by the defendants testified that the all rail rates to Montana common points from San Francisco were the same as the broken water and rail rates. Mr. Luce testified (Folio 7600), that the Southern Pacific moved freight from San Francisco to Montana points, both via Ogden, Oregon Short Line and Northern Pacific, and Portland and the Northern Pacific, but mostly via Ogden and the Short Line. At Folio 7606 he testified:

> "Q. How was it as to the business for Montana? Did they (Southern Pacific) seek that out of San Francisco?

A. Yes.

Q. Actively?

A. I don't know as they did actively, but they sought that business, handled the business and handled a majority of the business through Ogden in connection with the Oregon Short Line."

Defendants' Exhibits 51-a, Folio 7647; 52-a, Folio 7649; Exhibit 255, Folio 8168; Exhibit 256, Folio 8170, show a total of about $150,000 of competitive freight business between San Francisco and Montana common points in which these respective lines participated. This is exclusive of business into points in Washington, Oregon and Idaho, as to which they competed for the haul between San Francisco and Portland.

g. COMPETITION AS TO TRAFFIC BETWEEN VARIOUS PORTS IN THE ORIENT AND POINTS EAST OF THE MISSOURI RIVER IN THE UNITED STATES.

Mr. Mahl, Comptroller of the Union Pacific and Southern Pacific lines, testified (Folio 425) that of the twenty millions capital of the Pacific Mail Steamship Co., the Southern Pacific Co. owns $10,010,000, just a majority; that these boats ply between San Francisco and Central America, China and Japan. Mr. Mahl testified (Folio 449) that all the stock of the Portland & Asiatic Steamship Co. belongs to the Oregon Railroad & Navigation Co.

Mr. Cornish said (Folio 494) that the Pacific Mail operates lines of steamers from San Francisco to China and Japan, and the Navigation Co. controlled by stock ownership the Portland & Asiatic Steamship Line, with ships running from Portland to the Orient. He then testified:

> "Q. If that company belongs to the Navigation Co., then the Union Pacific Co. has a through line of railway and steamships, through its stock ownership, from Council Bluffs and Kansas City to ports in the Orient via Portland, does it not?
>
> A. It would amount to that, yes.
>
> Q. And the Southern Pacific has a through line of transportation from New York via Southern Pacific and San Francisco to the Orient by steamship and rail?
>
> A. Yes, through their control of the Pacific Mail."

Mr. Stubbs testified that there was a line of steamships between Portland and Oriental points, first, that was run by outside parties, and that at the time he took office as Traffic Director and became connected with the Union Pa-

cific, the Portland & Asiatic Steamship Co. was organized and controlled by the Oregon Railroad & Navigation Co., and prior to that time, either private interests owned a line in connection with the O. R. & N., or the O. R. & N. Co., owned the Portland & Asiatic Steamship Co., which operated to Asiatic ports in connection with the Union Pacific. (Folios 527-8.)

Mr. Stubbs further testified with reference to this matter, at Folios 565-6. The steamship line that was run in connection with the O. R. & N. rail line to Portland, previous to the organization of the Portland and Asiatic Steamship Co. was called the Doddwell Line. One Mr. Graham had a suit concerning a proposed steamship line from Portland to the Orient, in which the O. R. & N. Co. was the defendant. Mr. Stubbs testified in that case. His attention was called to the testimony he there gave. It referred to a time previous to the amalgamation of the Union Pacific and Southern Pacific, when Mr. Stubbs was Vice-President of the Southern Pacific in charge of traffic. He admitted that he had testified in that case as follows:

> "A. I could hardly be any authority or advisor to him with respect to contracts for the steamship connection with the Oregon Railway & Navigation Company in the way of giving him information or advice, because that line was directly opposed to the interests I represented, and a competitor to the lines via San Francisco."

He also admitted that he had testified as follows:

> "A. I would undertake to say that it is very unlikely that he would have asked me about them or either of them. The relations of the Southern Pacific with the Pacific Mail, and the relations of

the O. R. & N. with the Dodwell Lines, because, as I have explained, the two lines were diametrically opposed to each other, and competing vigorously every day in the year."

After admitting that he so stated in the Graham case, he testified:

"Q. That is, that the Oregon Railway & Navigation Co. in connection with the Dodwell Line and the Southern Pacific and its line, were competing vigorously every day in the year.
A. That is, for Trans-Pacific business.
Q. For Trans-Pacific business?
A. Yes, sir, and they are doing it to-day.
Q. Then they are competitors, are they?
A. In that sense, yes."

Mr. Stubbs further testified (Folio 610):

"It is also a fact, just as I have explained to you, that the steamship line between the Orient and San Francisco, and the steamship line between the Orient and Portland, and the steamship line between the Orient and Puget Sound, competed for traffic from the Orient to all points in the United States."

An effort was made to minimize the business transacted by the Portland & Asiatic route, but it appears by the statistics prepared by Mr. Stebbins, covering the movement of traffic of various kinds, that quite a considerable percentage of the revenue received by the rail lines in connection with Oriental business accrues from business moving through Portland. For the purpose of aiding the court to determine the substantial character of the business which but for the amalgamation of the Southern Pacific and Union Pacific would have been competitive, statistics were prepared

by the General Auditor of the Southern Pacific and Union Pacific systems under the particular charge of Mr. Stebbins, Assistant to the General Auditor. It appears by Mr. Stebbins' testimony, at Folio 3042, that it was impossible to furnish statistics for the years 1900 or 1901, immediately prior and immediately succeeding the control of the Southern Pacific by the Union Pacific, because of the destruction of the Southern Pacific records in the San Francisco fire and of a considerable portion of the records of the Union Pacific Railroad Company by fire in the record room at Omaha in December, 1906. Requests had been made upon the defendants for the purpose of expediting the trial, to have these statistics prepared for 1900 and 1901, and also for one month in the autumn of 1906, and a month in the spring of 1907. The correspondence with reference to the preparation of these statistics will be found in the record, at Folios 3051-74, and it appears by the statements of counsel in the record, at Folios 3078-81, that it was assumed by all parties that the month of October and the month of April would be fair months to take as representative months Complainants' Exhibit 119 shows that for October, 1906, the Oriental business going via the Union Pacific and Southern Pacific line from the Missouri River, gave a revenue to the railroads of $39,087.82. The same month the Union Pacific system received a revenue of $6,483.04 on Oriental traffic moving through Portland. It further appears on the same exhibit that a rail revenue of $26,474.17 was received on Oriental traffic moving via El Paso and Southern Pacific; that of such revenue $3,179.13 accrued from traffic that passed through Portland, the remainder via San Francisco.

The business done during April, 1907, is shown on Complainant's Exhibit 121. From this it appears that the total

rail earnings on Oriental business via San Francisco in connection with the rail line of the Union Pacific and Southern Pacific to the Missouri River was $25,410.26, while the revenue of the Union Pacific system on Oriental business through Portland was $10,264.24. In addition, there were earnings via El Paso accruing to the Southern Pacific on Oriental business through San Francisco, $9,918.24. From this it appears that nearly 25% of the rail earnings on Oriental traffic for that month were on business moving through Portland. Therefore it cannot be said that the competition is not substantial, as the annual revenue is very considerable. It is understood, of course, that the traffic covered by these exhibits is all traffic to points east of the Missouri River gateway, so it could be moved through by either the San Francisco and Southern Pacific route, or the Portland Union Pacific route.

Mr. Munroe testified, at Folio 655, that the bulk of the outward bound tonnage of the Portland & Asiatic Co. ships was flour, and the inward tonnage consisted of products of the Orient, notably tea, rice, curios and silk, which is handled to the east over the Union Pacific system lines, and that had been the case for several years prior to 1901. The effort was made to send as much traffic as could be sent over that line, because the O. R. & N. owned the line.

Mr. Schwerin, who has been Vice-President and General Manager of the Pacific Mail Steamship Co. since 1893, and who is now in charge of all the steamship interests of the Union Pacific-Southern Pacific combination, testified, at Folios 2706-8, as to the ships in the Pacific Mail steamship service from 1893 on, and that they touched at Yokohama, Kobe, Nagasaki, Shanghai and Hongkong, and sometimes

at the port of Amoy, and that freight was brought from the port of Tientsin by coast steamers to Shanghai or Nagasaki. At Folios 2709-11 he gives the names of the agents of the Pacific Mail in the Orient. At Folio 2712 he explains that these agents in the Orient solicit freight and passenger traffic for the Pacific Mail ships, making through billings of commodities destined to points in the eastern portion of the United States. He further testified that the Occidental & Oriental Steamship Co., sailing out of San Francisco, had three ships, the Doric, the Coptic and the Gaelic; that while they were operated under a different management, the Pacific Mail Steamship Co. was its agent for freight and passenger business in the Orient. (Folios 2713-14.) At Folios 2720-21 it appeared that 50% of the stock of the Occidental & Oriental Steamship Co. had been owned by the Union Pacific, and 50% by the Pacific Improvement Co., which latter company was owned in equal proportions by the Estate of Governor Stanford, by the Crocker Estate, by Mr. Huntington and by Mr. Searles; that the Union Pacific afterwards acquired the outstanding stock in the Occidental & Oriental except the one-eighth owned by the Huntingtons, which is still outstanding. At Folio 2719 he testified that the Southern Pacific purchased the majority of the stock of the Pacific Mail in the fall of 1900; that it bought quite a block of it from Mr. Harriman and Mr. Hawley, that these gentlemen sold a block of it short to the Southern Pacific, then they went on the market, picked up the stock and made deliveries.

He further testified that the Canadian Pacific in 1893, when he came to the Pacific Mail, was operating a line of ships from Vancouver, competitive with the Pacific Mail, and with separate agencies in the Orient, and the Northern

Pacific Steamship Co. from Tacoma was operating a line in competition with his. (Folio 2723.) In 1899 a Japanese line commenced running to San Francisco, and the Pacific Mail took the agency of that line from its inception, and still has it. (Folio 2724.)

At Folios 2724 to 2726 he also spoke of the Standard Oil line of four ships taking oil to the Orient and bringing back freight in competition with the Pacific Mail and its allied lines and the Dollar Steamship Line loading lumber to the Orient, and competitors homeward on general traffic. The Dollar Line has separate agencies in the Orient. At Folios 2727-8 he spoke of the Japanese line in connection with the Great Northern from Seattle, competitive with his, and the Ocean Steamship Co. from Tacoma or Seattle, also competitive, and the China Mutual Steamship Co., also competitive. He then testified (Folios 2728-30) that the steamship line from Portland was established in 1896 or 1897; that it was first the Samuels & Samuels Line, succeeded by the Dodwell Line, and succeeded in turn by the O. R. & N., except for about three months intervening, when Mr. Graham had some ships running from Portland. At Folio 2729 Mr. Schwerin said:

> "Q. Did you regard the Dodwell Line as a competing line?
> A. Yes, sir.
> Q. And the Samuels' Line?
> A. Yes, sir.
> Q. And the Portland & Asiatic?
> A. Yes, sir."

He further said, at Folio 2730, that the boats of the Portland & Asiatic Co. are still running, and that since 1904 he has had charge of them; that up to 1904 this company had agents of its own in the Orient, soliciting traffic, per-

forming the usual duties of agents, but since 1904 the Pacific Mail has acted as the agent of the Portland & Asiatic. This necessarily eliminated the competition previously existing on inbound business.

Mr. Schwerin further testified (Folio 2751) that the traffic coming in over the Portland & Asiatic moves to the east over the O. R. & N. and Short Line and the Union Pacific. At Folio 2752 he was asked as to whether the character of the commodities imported through the Portland gateway and the imports through San Francisco are about the same, and replied:

> "A. As far as this Portland tonnage is concerned, with the exception of silk, silk piece goods, the rougher or common class of goods that go by tramp steamers rather than by mail and dispatch steamers, and excluding this local Oriental business which we have largely here in San Francisco, the general tonnage is about the same—matting, tea and curios."

He further testified that when the O. R. & N. boats to the Orient were independent of the Southern Pacific, that it was customary for the O. R. & N. boats from Portland to San Francisco to bring down Oriental traffic that came in by way of Portland, and deliver it in San Francisco, without extra charge, and he says the same thing is still done; that the same rates apply to San Francisco via Portland as to San Francisco direct. (This business through Portland is, of course, additional to that shown by Mr. Stebbins, which only covers traffic destined to points east of the Missouri River.) The freight to San Francisco is prorated between the San Francisco and Portland line, and the Portland and Asiatic on the basis of their respective

through rates. (Folios 2753-5.) This division is made by Mr. Schwerin acting for both parties, as he is the manager of the San Francisco and Portland line. It appears at Folio 2756 that at times this charge from Portland to San Francisco is not prorated on the basis of the locals, because the local rate might be too high in proportion to the trans-Pacific rate, and in that case Mr. Schwerin stated that he divided it like Solomon—cut a fair division to each. To show the way the affairs of these various allied lines are intertwined, we call attention to Mr. Harriman's testimony (Folios 1309-10) as to the Mongolia and the Manchuria, two large ships now operated by the Pacific Mail, costing something over five millions of dollars; they were bought and owned by the Oregon Short Line, which leases them to the Pacific Mail Steamship Co., the rental being fixed between Mr. Harriman, President of both lines, and Mr. Schwerin, Vice-President of the Pacific Mail. When Mr. Schwerin was testifying, he thought the ships belonged to Mr. Harriman personally, as the charter party of the ship was between the Pacific Mail and Mr. Harriman, and at Folio 2762 it appears that when he made the arrangement for the lease of the ships, he recognized Mr. Harriman as acting personally, and not as President of the Pacific Mail or in any other capacity.

Counsel for defendants brought out on cross-examination that the Portland & Asiatic line was started and is maintained because of the flour export traffic; that wheat is grown along the line of the O. R. & N. Railroad, and for the purpose of getting the haul on that wheat to Portland, where it is ground, it is necessary to maintain the steamship line to the Orient to carry away the output of the wheat, and that as an independent proposition, the steamship line is not a success. That, of course, is en-

tirely immaterial in the present case. Whatever may have been the reason for establishing the line or maintaining it, if it is, as seems to be admitted by all parties, a competitive line with the Pacific Mail line and the others through San Francisco, it is unlawful to consolidate the two. Even the Pacific Mail line, according to Mr. Schwerin, at Folio 2806, is run at a loss, which ran up to nearly half a million dollars in the year 1906, the year before he was giving his testimony.

At the same Folio (2806) he pretty well disposes of the claim set up in the answer, that the Portland & Asiatic is not a real line, and says that it has maintained a fairly regular schedule out of Portland, and the only time the schedule has varied has been when, at the earnest solicitation of Portland shippers it has sent one of the steamers off the regular route to some point like Kadodate or Newschwang. Mr. Schwerin, after explaining at some length about the securing of cargoes from the Orient to this country, summed the matter up very fairly at Folio 2814:

> "Q. Do I understand it that it is to be left to the discretion of your agents in the Orient as far as unrouted traffic is concerned, as to which way they will send it?
>
> A. The agent must use his own discretion to get the ships unloaded, and get as much competitive freight as he can get hold of.
>
> Q. That is, competitive as between your lines and outside lines?
>
> A. Yes, sir.
>
> Q. There is no competition between the Portland & Asiatic, the Occidental & Oriental, the Pacific Mail, and the Japanese Line, controlled by the Pacific Mail Steamship Co. but they are all four lines competing against the Great Northern and Canadian Pacific and other lines?

A. Well, you might describe it that way.
Q. That is about right?
A. About right, yes, sir."

It further appears by Mr. Schwerin's testimony (Folio 2716) that Mr. Hawley, when General Eastern Agent of the Southern Pacific, was the agent of the Pacific Mail Co. in New York from 1895 or 1897, until he left the employ of the Southern Pacific, and he was succeeded by Mr. Spence, his chief clerk, who also succeeded him as agent of the Southern Pacific. His agent at Chicago was Mr. Niemyer, the Southern Pacific representative at that place. It appeared further, at Folio 2717, that the Southern Pacific representatives acted for the Pacific Mail organization in Boston, Baltimore and Philadelphia, although the only two regularly appointed agents of the company were Mr. Hawley and Mr. Niemyer. They were contracting agents. (Folio 2718.)

Mr. Montgomery, Traffic Manager of the International Harvester Co., says their Oriental business moves through all the Pacific Coast ports, including San Francisco and Portland. (Folio 2954.)

Mr. Bihler, Traffic Manager of the Carnegie Steel Co., testified that at the present time their shipments to the Orient moved by the Suez Route, and at other times they have moved traffic by the Pacific Coast through Portland, Tacoma or Seattle, and not through San Francisco. (Folio 2072.)

Mr. O'Reilly, with the Union Pacific and O. R. & N. freight departments for many years, since 1891 living in Portland, testified that the first Portland steamship line was

the Samuels Line, established prior to 1894, and succeeded by the Dodwell Line, and then by the Portland & Asiatic, all running in connection with the O. R. & N., Oregon Short Line and Union Pacific. The general range of importations by these lines was tea, silk, matting and curios. (Folios 4338-9.)

He further testified that the Samuels and Dodwell Lines had agents in the Orient endeavoring to work business by the line through Portland, and that Mr. Cameron was sent over to the Orient as General Agent of the Portland & Asiatic Steamship Co. upon its organization, and the business moving from the Orient on the Portland & Asiatic boats secured by Cameron or the preceding organizations, came from the same ports from which the Pacific Mail steamers sail to San Francisco. Outside of the local flour traffic moving to the Orient by this line, cotton, railroad iron, and machinery from east of the Missouri River, and cotton from Texas, moved to the Orient. Cotton from Texas also moved by the Southern Pacific-Sunset Route to San Francisco, thence to the Orient. The iron and steel moving by this line came from Pittsburg territory. (Folios 4363-5.)

Mr. Sweek, in the traffic department of the O. R. & N. previous to and at the time of the organization of the Portland & Asiatic Steamship Co., testified that the steamship business was under the general charge of Mr. Campbell, Traffic Manager of the O. R. & N.; that the principal cargo brought from the Orient consisted of rice, tea, matting, lily bulbs, curios, silk, camphor, sulphur and jute. He also gave the ports of call in the Orient. (Folio 4457.) Mr. Cameron, the General Agent, was stationed at Hongkong, and had subagents working under him at different ports.

There were sailings about once a month the first year that the Portland & Asiatic was organized. (Folio 4458.) The traffic to the Orient consisted of flour, wheat, barley, machinery, tobacco, cotton piece goods, and various small items. The machinery originated at points east of the Missouri River, and moved over the Union Pacific. (Folio 4459.) The O. R. & N. agents in the east were agents of the steamship line, and in addition, the steamships had some traveling men through the east. (Folio 4459.) Cotton shipments to the Orient moving by this line came from different points, a great deal of it from Texas and the south central states. It moved from Texas to a connection with the Union Pacific either at Kansas City or Denver, and was then brought on by that line, the Short Line and the O. R. & N. Cotton also moved from those Texas points to the Orient by way of the Southern Pacific and the Pacific Mail and other steamship lines out of San Francisco. (Folios 4459-60.) Traffic from the Orient was billed through to points in the east. It was way-billed from Portland. The routing to the east was principally in the hands of the O. R. & N. They tried, as far as possible, to control it to facilitate the loading, sending cargoes out in train loads, making much better time by having it go in a bunch, if possible. These train loads moved over the Union Pacific. (Folios 4460-1.)

Mr. Stubbs, when called by the defendants, apparently contradicted the testimony that he had previously given as to the competition between the Portland and San Francisco route, by saying at Folio 6599 that the Union Pacific worked its Oriental business preferentially through San Francisco, and he gave a reason for that which will hardly hold water,

as was shown on cross-examination. We quote from his direct testimony:

> "A. It had its interest in the O. & O. Steamship Company, and the Union Pacific proper had a longer haul into Ogden than it would have had if it took it to Granger,—the Union Pacific proper."

On cross-examination (Folio 6618 et seq), he testified that the different steamship lines out of Portland handled their trans-continental business in connection with the O. R. & N., the Short Line and the Union Pacific. At Folio 6619 he gave this testimony:

> "Q. The O. R. & N., when they established a line to the Orient themselves, that is, the Portland & Asiatic, put a traffic man over there in charge of it, didn't they—to seek the routing of business this way—Mr. Cameron?
>
> A. I think so. That is my recollection, yes, sir.
>
> Q. And he was soliciting business for that line in connection with the rail lines of the Union Pacific and sub-lines to Portland in the same ports that the Pacific Mail organization was seeking business through San Francisco?
>
> A. I think so.
>
> Q. And you testified at one time, did you not, that that line through Portland was in active competition with the lines that you represented through San Francisco?
>
> A. I did, sir.
>
> Q. You still say that, don't you?
>
> A. Yes, in that sense."

It is very hard to see how this testimony of Mr. Stubbs on cross-examination can be reconciled with his statement on the direct examination to which we have just referred. At Folios 6621-2, his statement about the relative interest of

the Union Pacific in moving traffic through these respective ports was likewise contradicted by himself. He testified:

> "Q. Now, this is the fact, isn't it, that as to all Asiatic business that moves via Portland by the Portland & Asiatic or its predecessor lines, the Union Pacific as the owner of the Short Line and the O. R. & N., which in turn controls the Portland & Asiatic, has a through line of its own from Asiatic ports to the Missouri River.
>
> A. Practically.
>
> Q. Whereas if the business moves through the port of San Francisco, the Union Pacific itself had, as you say, a half interest in the Occidental & Oriental and the haul from Ogden to the Missouri River, but no interest in the haul from Ogden to San Francisco?
>
> A. That is right.
>
> Q. And if it moved by the Pacific Mail Steamship Company the Union Pacific had no interest in the business except such as it got for hauling the traffic from Ogden to the Missouri River?
>
> A. That is right, with respect to that particular movement."

At Folio 6623 he testified:

> "Q. Was there an attempt made to move business to the Orient by the Sunset Route, originating in Atlantic seaboard territory?
>
> A. Yes, sir.
>
> * * * * * * * *
>
> Q. Did cotton move to the Orient from Southern Pacific territory in Texas?
>
> A. Yes, sir.
>
> Q. Through San Francisco?
>
> A. Yes, sir.
>
> Q. And also through Portland?
>
> A. Yes.
>
> * * * * * * * *

Q. That cotton business to the Orient at one time was quite an extensive business, wasn't it?
A. Yes indeed.
Q. And all of the lines were seeking it?
A. All of them."

At Folio 7619, there is a summary introduced by Mr. Stebbins showing the total Oriental business through both ports for the year ending June 30, 1901, making a total of $372,857, of which $53,570 moved through Portland. This is admittedly only an estimate computed on the basis that 70% of the total tonnage moved east of the Missouri River over the Milwaukee and St. Paul and the Chicago & Northwestern roads. Averaging the earnings shown upon Complainant's Exhibits 119 and 121 for a year, would show total Oriental traffic in 1906 and 1907 a little over $700,000, and a comparison of these earnings with those for the year ending June 30, 1901, shows that the business has nearly doubled. *These figures include only the rail revenue of the two systems, and not the revenue of steamships on the Pacific Ocean, which is not shown in any exhibit.* (Folios 7664-5.)

From the testimony of these various witnesses, it appears that the Portland & Asiatic Co. and its predecessors maintained a line of ships with monthly sailings out of Portland; that the Union Pacific and the O. R. & N. organization throughout the east, together with certain special agents, were endeavoring to route all the traffic possible by Portland in direct competition with the ships of the Pacific Mail and other ships leaving San Francisco; that in addition to shipments of manufactured products from the East, cotton moved to the Orient from Texas and other southern points in competition with the Southern Pacific-Sunset Route and the Pacific Mail and the allied lines out

of San Francisco. There was, therefore, active, energetic competition for cargoes to the Orient. As to competition from the Orient, that is admitted. Separate soliciting agents were maintained in the Orient, traffic moved not only to Portland, but to San Francisco, being trans-shipped at Portland to the boats of the O. R. & N. Co., and delivered on the docks at San Francisco. The traffic moving through Portland went east over the Union Pacific system, business reaching San Francisco went east partly over the Southern Pacific.

We have previously commented on the relative importance of this business transacted through the port of Portland to that transacted through the port of San Francisco. This was shown by the statistics prepared by the defendants. All the competition between these two lines has been eliminated, as was frankly stated by Mr. Schwerin, now in charge of the boat lines.

RECENT EFFORTS OF THE UNION PACIFIC TO RENDER THE CONTROL OF THIS COMPETITIVE LINE LEGAL THROUGH LEGISLATION.

Mr. Kahn was produced as a witness on the part of the defendants, and gave testimony on March 7, 1910. He is again a member of the Board of Directors and Executive Committee of the Union Pacific. On cross-examination he was asked at Folio 7886, whether the Union Pacific or the Oregon Short Line or any one of those companies had acquired any Southern Pacific stock during the preceding ninety days. This question was renewed in different forms. Finally at Folio 7888, he asked leave to consider and take advice of counsel before answering. After some discussion the question was passed until after luncheon, when it was renewed, and he gave the following testimony at Folio 7901:

> "Q. Now I will ask you as I did before luncheon, whether since you returned to the Board and Executive Committee of the Union Pacific that company or the Oregon Short Line Railroad Company or the Oregon Railroad & Navigation Company, or anyone in the interests of those companies or any of them have purchased any Southern Pacific stock? * * *
>
> A. The only additional stock purchased was purchased, as far as I know, early in January * * * this year. Being 74,000 shares. These 74,000 shares were bought for the following reason— * * * 74,000 shares of Southern Pacific stock * * * common stock * * * These 74,000 shares were bought for the following reason: A bill (so we were informed) was introduced in Congress or contemplated to be introduced in Congress, which would give to those railroads that had 50 per cent of the holdings of another railroad (*competing or other-*

wise) the right not only to retain that 50 per cent, but if they so chose, to purchase the balance, in addition to the 50 per cent, whilst railroads that had less than 50 per cent had no such assurance. Thereupon, upon the advice of Judge Lovett, it was deemed in the best interests of the Union Pacific that its holdings of Southern Pacific stock should be increased to a total of 50 per cent of the entire outstanding amount of the Southern Pacific stock. A few weeks afterwards Judge Lovett advised the Executive Committee that the terms of the bill as he had understood them, had been changed, or were going to be changed, and that the provision to which he referred and which was the reason for the purchase of additional Southern Pacific stock would not go into the bill, and Judge Lovett advised in consequence that the purchase of additional Southern Pacific stock be stopped at once, and it was stopped on the same day, and no more stock has since been acquired. * * *

Q. How many additional shares would it have been necessary to purchase to accomplish the acquisition of 50 per cent of the stock at the time that purchase was undertaken in January?

A. We would have required, roughly speaking, 154,000 shares."

Could there be a more complete confession of guilt than this? If the roads were not competing it required no legislation to permit the purchase of any amount of the stock. Their control was absolute; they did not need any more stock for that purpose, but with Southern Pacific stock selling at above 130 they proposed to spend about twenty millions of dollars in anticipation of this legislation, which if enacted, would have rendered legal the ownership of the stock of a competing line of railroad. They actually did invest about ten million dollars of the money of the stockholders of the Union Pacific before they became satisfied

that the legislation would not pass, and therefore the purchase of the stock would not avail them. It would seem to require a great deal of courage after this confession to assert that these parties did not know and fully appreciate that these lines of railroad, as the testimony so clearly demonstrates, were competing lines.

THE POSSESSION OF A THROUGH LINE FROM THE MISSOURI RIVER TO PORTLAND WITH THE ADDITIONAL STRENGTH GIVEN BY THE BOAT LINE FROM THERE TO SAN FRANCISCO, MADE THE UNION PACIFIC SO POWERFUL IN MAINTAINING AND CONDUCTING THIS COMPETITIVE STRUGGLE FOR BUSINESS THAT THE SOUTHERN PACIFIC WAS HELPLESS TO DESTROY THAT COMPETITION SIMPLY BY THE OWNERSHIP OF THE LINE FROM OGDEN TO SAN FRANCISCO OVER WHICH THE TRAFFIC SECURED BY THE UNION PACIFIC ORDINARILY MOVED.

This is a fact that has at all times been recognized both by the Union Pacific and Southern Pacific companies, and has also been clearly established by the testimony in this case. Complainant's Exhibit 16 is a part of the records of a directors' meeting of the Union Pacific Railroad Company under date of August 29, 1899, at which the acquisition of the stock and bonds of the Oregon Short Line and Oregon Railroad & Navigation Co. was approved. We have heretofore called attention to the remarks of the late defendant Harriman as Chairman of the Executive Committee, with reference to the purchase of said stocks. We again quote from this address (Folio 103):

> "He stated that the acquisition of the Navigation preferred stock and the Short Line B. bonds on the basis indicated would secure the control of the Navigation property and complete the extension of this company's (the Union Pacific) system to the Pacific coast."

At that time the conspiracy afterwards formed to monopolize the Trans-Missouri traffic had not been formed, and therefore the resolution for the acquisition of the control of those two lines by the Union Pacific was approved in a resolution in the preamble of which, (Folio 105), appears the following language:

> "WHEREAS, the lines of railroad of said Oregon Short Line Railroad Company and said The Oregon Railroad & Navigation Company constitute extensions and auxiliary lines of the railroad of this company, and are not parallel or competitive therewith." etc.

Thus it appears that the Union Pacific and the defendant Harriman at that time appreciated that the system of the Union Pacific was complete and its strength and power was determined by the extension of its line to the Pacific coast by procuring the control of these lines which were neither parallel nor competitive with it. Previous to the receivership of the Union Pacific the Short Line and the Oregon Railroad & Navigation Co. in the nineties, the Union Pacific controlled the Short Line and the Navigation Co. This control had been lost by reason of the separate receiverships and reorganizations, and it was merely to reinstate itself as a through line to the Pacific Ocean that the securities were purchased pursuant to the resolution above mentioned. That the Union Pacific, by reason of being a through line from the Missouri River to the Pacific Ocean was a competitor of not only the Southern Pacific Sunset Route, but the Central Pacific, was thoroughly recognized by the Central Pacific and by the defendant Southern Pacific Company, and that fact was put down in black and white in the lease of the Central Pacific to the Southern

Pacific in 1885, which has been introduced in evidence by the defendants in this case as Defendant's Exhibit 40. (Folio 6460.) The preamble of this lease, so far as material, is as follows:

> "THAT WHEREAS, part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific, has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe railroads; and
>
> WHEREAS, the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line and thereby secured an outlet to the Pacific other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interest of the Central Pacific, and
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> WHEREAS, it now appears that the through business hitherto done by the Central Pacific Railroad will thereby be further diverted, and that it is not only to the best interests of but absolutely necessary that the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic; and
>
> WHEREAS, the said Southern Pacific Company has a line of railroad under its control for a period of ninety-nine years extending continuously from the Pacific ocean to the Atlantic ocean;
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> * * * * *
>
> AND WHEREAS, the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company whereby its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against

the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections," etc.

We thus have not only the recognition by the statement of the defendant Harriman and the resolution of the board of directors of the Union Pacific Company that the possession of the Short Line and the Navigation Co. by the Union Pacific made a complete system reaching the Pacific Ocean, but we have the declaration of the other defendant, the Southern Pacific, that this through line was one which would divert traffic and would render the Central Pacific helpless unless it was tied up with another line that could protect it as against the lack of harmonious connections. Naturally, while the Union Pacific and the Central Pacific were connections, and while they necessarily would interchange a vast amount of business, they were not harmonious connections. They were opposed in interest, and the possession of this through line to the Pacific Ocean put in the hands of the Union Pacific a weapon which it could use with effectiveness in carrying on its competition against the Southern Pacific. So that, aside from the testimony of the expert railroad men, to which we will now call attention, we have here a declaration to that effect by both the Union Pacific and the Southern Pacific systems.

Through rates are fixed in conference and before the merger the Union Pacific and Southern Pacific each had an independent voice in making the same.

It appears by the undisputed testimony in this case, and is a matter of common knowledge, that the railroad rates to and from competitive points must of necessity be uniform unless, by reason of some physical disadvantage of one line as against another, they operate under differentials. Those differentials, however, are established for the

purpose of equalizing the advantages and disadvantages of the two lines in handling traffic, so that the two transportation systems can compete for business upon equal terms; and it is only in case of rate wars that this rule is departed from. Differentials exist by agreement as to passenger business, as is well known, between points in the west and New York, certain lines being known as standard lines and others as differential lines. This is occasioned by the fact that one line is able to give quicker and better service. Therefore the other lines cannot compete for the business unless they are permitted to handle traffic at a lower rate. A marked example again of differentials is found in the business conducted by rail and lake as against the all rail lines from the east and the west. In the argument of Mr. Kerr, concerning the Canadian Pacific differentials, which by consent was put into the record, there is a discussion of the lake and rail rates as compared with the all rail rates, and the amount of the differentials is shown in the tables appearing at Folios 3368, 3369, 3370. Not only are differential rates thus put in by agreement, but all rates are in effect fixed by conference. Mr. Stubbs, being examined upon the subject of transcontinental rates, testified as follows, (Folio 3332):

> "Q. As a matter of fact, the rates for many years have necessarily been made by conference of the different lines interested, haven't they—the only way they could be equalized?
> A. Always."

It appears without dispute, and is shown by the tariffs introduced in evidence, that the various lines unite in the publishing of tariffs through associations. Mr. Morton, on cross-examination, testified at Folio 1391, that it was

absolutely necessary, if the rates are lawful, that they should be the same by all practical routes, and while he testified that in general the California rates suggested by the Southern Pacific were adopted, he gave the reason for that at Folio 1401, as follows:

> "The Southern Pacific officials were on the ground. They were in intimate, close relationship to the receivers and shippers of goods, and they had a bigger interest in California than anybody else, and naturally the other railroads bowed to and favored them in regard to what should be done out there."

But he also said in connection with the same matter, at Folio 1391:

> "When I say that the Atchison and the Southern Pacific were always regarded as the rate-making power, so far as California rates are concerned, of course I take into consideration the fact that the rates to the Pacific coast are generally the same, and that the rates made by the northern routes—the northern transcontinental lines, the Canadian Pacific, the Great Northern, the Northern Pacific *and the Oregon Railroad & Navigation Company, are taken* into consideration, of course."

He testified again:

> "We have never published rates that have not been by agreement of all other railroads or by understanding after discussion." (Folio 1403.)

And again:

> "Q. Now in the traffic meetings that have been held since the days when the pool went out of business existence, when questions of policy were up for

consideration, or questions of rates, were not the Union Pacific and the Sunset Route competing with each other often times?

A. Frequently." (Folio 1399.)

It must be remembered that there are many rates to points in the interior, as to which the Southern Pacific is compelled to unite with other lines, which have an equal voice in the making of rates, so that necessarily transcontinental rates are matters of conference and agreement.

Mr. Hawley testified, Folio 1435:

"Q. Now you stated in answer to Judge Lovett, that the Union Pacific could not make a through rate without the concurrence of the Southern Pacific. Isn't it a fact that the transcontinental rates were made as a rule at meetings in which all the roads were represented?

A. By agreement, yes.

Q. And the Union Pacific was represented separately from the Southern Pacific?

A. Yes, sir.

* * * * *

Q. Now in fixing transcontinental rates, were all the lines through to the coast considered as factors in arriving at a proper rate?

A. Yes, sir.

Q. That would include the Canadian Pacific, the Northern Pacific, the Great Northern, the Union Pacific to Portland, and all the lines down?

A. There were joint tariffs issued to which all lines were parties.

Q. In the matter of fixing rates, were the boat line by Panama and the ships around the Straits of Magellan at times factors?

A. They were factors, yes."

At Folio 589, Mr. Stubbs, testifying before the Interstate Commerce Commission, (his testimony being inserted in this record by consent), stated in answer to Commissioner Clements with reference to this transcontinental business, that they were published by a joint common agency that represents all the transcontinental lines.

Influence of Portland Route on Transcontinental Rates.

Mr. Gothlin, a member of the Railroad Commission of Ohio since August 1st, 1906, and immediately previous to that Traffic Manager of the National Cash Register Co. of Dayton, Ohio, and before that for many years in the railroad service, testified, at Folio 2441:

> "Q. What is your opinion as to the influence that the Union Pacific, considered apart entirely from the Southern Pacific, would legitimately have in the fixing of transcontinental rates to California points, San Francisco, by reason of the possession of a through rail line to Portland in connection with the boat line from there to San Francisco?
>
> A. Well, I see no reason why, if the Union Pacific were a separate and distinct organization, and had an active and vigorous management, they could not practically dictate to the Transcontinental Association any policy that they might see fit to adhere to strictly; that is, they could at least be in position not to be dictated to, not coerced into anything that they did not care to admit."

Mr. Gothlin was cross-examined at great length upon this question by defendants' counsel, and adhered to his opinion and gave excellent reasons for it. Counsel for defendant endeavored to show by Mr. Gothlin, as he did by other witnesses, that in case the Union Pacific should see fit to work business to California by way of Portland in opposition to the Central Pacific, that eastbound business

might be diverted by the latter line at Ogden to the Rio Grande, and thereby greater loss be inflicted upon the Union Pacific than it would be able to inflict upon the Southern Pacific. This is really entirely beside the question, but he made an answer which was somewhat further developed upon re-direct examination, which seems conclusive upon that point. We quote from cross-examination, Folio 2448:

> "Q. Now as against a line of that sort, (the direct all rail line), that direct short rail line, don't you think that the Union Pacific would inevitably lose vastly more in that controversy by that diversion of traffic than it could possibly gain by the use of the route by way of Portland? Now you have some knowledge of traffic, of course. Would not that be your opinion?
>
> A. My experience of rate wars is they are senseless anyway, and the management does not care how much they are losing. Their object is to hurt the other fellow. And undoubtedly the Union Pacific could inflict more damage upon the Southern Pacific, I believe, than it could possibly receive, if the question were one that they felt justified extreme measures of that kind.
>
> Q. Do you think that the Union Pacific could inflict more injury on the Southern Pacific in that controversy than it would receive by the diversion of the traffic from it?
>
> A. I think the experience of rate wars will show that the smaller line can always hurt the larger line in a larger ratio than the damage to itself. The Southern Pacific, you know, has more interests than the line from Ogden to Frisco; they have the interests of the long haul line from New Orleans, and I do not have much doubt but that the Union Pacific could, if it saw fit to take drastic measures, arrange rates so that from this whole territory the New Orleans route would get scarcely anything." (Folio 2448.)

On re-direct examination, he went into this particular question as to relative loss a little more fully. We quote from Folio 2466:

> "Q. And what you meant was that if the rates were brought down by the Union Pacific competition, it would bring them down all along the line, and therefore it would cut the rates on all the Southern Pacific through business by New Orleans? Is that what you meant?
>
> A. Yes, sir; with the further idea that from a large part of this territory the distance via New Orleans is so much greater that the shrinkage would be felt a greater deal more; it would reduce the rate per ton per mile so much more than by a shorter line."

That the rates would thus be brought down all along the line was testified to by Mr. Stubbs. When he was being examined with reference to his argument concerning the Canadian Pacific differential of 10%, and had stated that there were eight mixed rail and water lines entitled to a like differential, if one was accorded the Canadian Pacific, six of those mixed rail and water lines being from the Missouri River by way of Portland to San Francisco, he read into the record from that argument, the following language:

> "Introduce differential rates with any of the American lines, and it must be manifest to any practical railroad man who knows the interdependence of these rates and these lines, that they will operate exactly as a cut rate. Let the rate be cut on the Great Northern, and it goes down to the Gulf of California." (Folio 3268.)

He then testified:

> "A. That is to say: if one of these mixed lines claimed a differential, then there were so many

other mixed lines that could be created, that they would immediately come in and demand a like differential and would so involve the whole traffic that there would be nothing left for the all rail lines. It would disorganize the whole situation. It would shatter the whole rate fabric. That was the contention; that was the gist of the argument there.

* * * * *

Q. And that is still your view just as you expressed it here?

A. Yes, I think so. (Folios 3269-70.)

* * * * *

A. Today with the enforcement of the law, the general, (I think universal) observance of the law, if those conditions were created, the moment the Canadian Pacific put in a 10% differential, all the other lines would meet it openly.

* * * * *

Q. Then, the necessary effect in your judgment, of putting in such a rate as the Canadian Pacific had in at that time would be to cause a reduction of the published rates by competitive lines?

A. Oh, but worse than that. It would eventuate in destructive rates—a war of rates that would be quite as much damaging, if not more, to the commercial communities than to the railroads. If one line started out to put in lower rates than its competitor, or its numerous competitors, and would put in a lower schedule, the other lines would meet it; then the original line would go lower; that would be met; it would go lower still, and that would be met, until rates became beyond the power of the average line to carry for any great length of time." (Folio 3271.)

It will be seen that Mr. Stubbs had no doubt that all these transcontinental lines were *competitors*. He so characterizes them in this answer.

On re-direct examination, after stating that the Union Pacific never had anything to complain of in the divisions agreed upon between it and the Southern Pacific, he testified as follows:

"Q. The Southern Pacific never attempted to force upon them a division which you would say was unfair?

A. If you mean what you ask me, I will say no.

Q. Unfair to the Union Pacific?

A. No.

Q. If such an attempt had been made, and as a matter of retaliation the Union Pacific had taken advantage of its Portland boat line and had cut the rates, then as I understood you to testify this morning, that would have resulted in cutting rates all along the line, over all routes, as you said in your usually eloquent—

A. Well, whether I said so or not, I say so now.

Q. That would have involved a loss to the Southern Pacific of its rates on the enormous traffic going over the Sunset route, would it not? That is true, if it was cut all along the line?

A. Why, if it was cut it would be cut everywhere, yes.

Q. It would hurt the Southern Pacific on its Sunset business, and would hurt it on its proportion of the through business it did from Ogden west, wouldn't it? That is apparent, isn't it? That is obvious, isn't it?

A. Yes, as compared with normal conditions, of course." (Folios 3321-22.)

When we consider in this connection the testimony of Mr. Hawley, that the Southern Pacific Sunset Route at times did as high as 85% of the transcontinental business from the Atlantic seaboard to San Francisco, (Folio 1419), it is obvious what a weapon, both in the matter of rates and divisions, was possessed by the Union Pacific in having a through line to tidewater at Portland. That the Southern

Pacific respected and appreciated this power of the Union Pacific is again demonstrated beyond controversy by the very significant admission made by Mr. Stubbs when he was on the stand. At Folio 3320 he was being examined with reference to the divisions of the through rate between the Union Pacific and the Southern Pacific. The division of the Missouri River rate to San Francisco had been from the beginning 54% to the Union Pacific and 46% to the Southern Pacific. Mr. Stubbs testified as follows with reference to that:

> "Q. And that division was always apparently satisfactory to both companies, wasn't it? Not that you would not have liked to have more, but didn't you treat that as a fairly satisfactory division, being practically on a mileage basis?
>
> A. No, I wouldn't say that; but I suppose it makes no difference how it is. I always held that it was a wrong division. The cost of the service west of Ogden was such that it ought to be more.
>
> Q. Because it was more expensive west of Ogden?
>
> A. *Yes, it was not satisfactory. However, it was all we could get at the time.*"

If the Union Pacific was bottled up at Ogden, to use an expression that is much favored by our learned opponents, why was it that the Southern Pacific could not get more, if Mr. Stubbs, its Traffic Manager, felt that it was entitled to more? There is no question that he is right, and that the expense of transporting traffic over the difficult mountain grades in the Sierra Nevadas and hauling it over deserts, where coal and water are scarce, is much greater than over the comparatively level line of the Union Pacific with its adequate coal supply, but the division was all the Southern Pacific could get at the time, as Mr. Stubbs puts it, and the

reason for that is that the Union Pacific, having its line to the coast and its boat line to San Francisco, was in such a commanding position that the Southern Pacific had to accord it not only fair treatment, but what he regarded as more than fair treatment, for the moment the Southern Pacific attempted to exact an unfair division of the through rate or insisted upon putting in a through rate unsatisfactory to the Union Pacific, the latter company could retaliate at once by putting in a lower rate by rail to Portland or boat and rail to San Francisco and causing this enormous loss to its competitor.

Mr. Markham, assistant to the Vice President of the Missouri Pacific Railroad, at St. Louis, with thirty-five years' experience as a railroad man, many years with the Illinois Central, and whose great ability in traffic matters is recognized throughout the western railroad world was examined upon this subject. (Folios 3684-85):

> "Q. Now, I will repeat my question that I asked before, as to what influence was possessed by the Union Pacific Railroad in transcontinental rates by the possession of this line from Omaha to Portland over its own rails and those of its subsidiary companies, the Oregon Short Line and Oregon Railroad & Navigation Company and the boat line from Portland to San Francisco?
>
> A. It would have an influence on the rates.
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> * * * * *
>
> Q. Why? How could that influence be used?
>
> A. Because it could make what rate it desired from Omaha to San Francisco."

On cross-examination defendants counsel drew out from Mr. Markham that the route by Portland was a few hundred miles longer than the direct all rail line.

On re-direct examination attention was called to the fact that the Sunset boat and rail route from New York to San Francisco is much longer than the all rail line, and still, as shown, the long route carries the most business. Attention was also called to the Panama Route, which is very much longer, and the Tehuantepec Route, which, as is the Panama Route, is not only much longer than the all rail routes, but much longer than the Sunset Route, and still they both participated in and competed for transcontinental traffic. (Folio 3697.)

He then testified as follows:

> "Q. Judge Lovett brought out from you the fact that in case of difficulty between the Union Pacific and the Southern Pacific, the Southern Pacific could send its unrouted traffic east from Ogden over the Denver and Rio Grande. Assuming that the Union Pacific was an independent line and able to take care of itself and do business as an independent line, what do you think would be the effect on the Southern Pacific—Ogden Route, their Ogden line, if they attempted to divert all their traffic eastbound to the Denver & Rio Grande at Ogden assuming the Union Pacific was free and independent and owned the lines that it did own?
>
> A. I think that it would result in a disastrous war of rates.
>
> * * * * * *
>
> Q. And in that war of rates, would the Sunset Route necessarily be drawn in if it desired to continue to participate in the business?
>
> A. Yes, sir." (Folio 3698.)

On re-cross examination counsel for defendants attempted to establish that by reason of the fact that the Union Pa-

cific received its traffic at Omaha from other lines, it would be impossible for it to cut the through rate, but that was easily answered by Mr. Markham, Folio 3709:

"Q. But right there: The Union Pacific could not cut the through rate legally without the concurrence of its connections, could it?

A. Judge, there is the power it would have to make its rate from Omaha irrespective of what the others do, * * * and make it on the sum of the locals.

* * * * * *

Q. Don't you think if the Union Pacific were to attempt a rate war under those conditions that it would be about as suicidal as—

A. Oh dear yes.

Q. You don't believe for a moment that any sane railroad man would attempt a thing of that sort seriously, do you?

A. Not unless the provocation was great. Of course if the Southern Pacific did not deal with it fairly at Ogden, there would be no other alternative left." (Folio 3710.)

* * * * * *

"Q. Those disastrous consequences which the Union Pacific would suffer, would not reach the Southern Pacific very much, would they, because the transcontinental rates could be held up? The Union Pacific could not affect the transcontinental rates?

* * * * * *

A. I don't think they could be held up. The other line of the Southern Pacific could not afford to ignore the amount of business that the Union Pacific could take by the other route, by the Portland route.

Q. From where?

A. From Omaha and points east. You see I am going on the idea that this is life and death, because with such giants it would amount to that.

Q. Do you think that the Union Pacific by cutting the rate and trying to handle it on a local from the Missouri River by way of Portland to San Francisco as against the work of all the other lines could make any considerable impression on the transcontinental rates?

A. I do, sir.

Q. Do you think it woud get any business of any consequence?

A. Yes, because the rates from the Missouri River are so very high that it could cut a great deal and still have a margin."

Again Mr. Markham said, at Folio 3702:

"Q. Then you think that the Union Pacific has always been very influential in controlling the transcontinental situation in the west, do you?

A. Yes, sir. It has been influential; the importance of the line and the personality of the officers."

Mr. Lincoln (Folio 3781) testified:

"Q. Wouldn't you consider the position of that route (Union Pacific route to San Francisco by Portland) of value in case the Southern Pacific should endeavor to make unreasonable demands as to divisions from the Union Pacific, in view of the fact that rates could be put in there which would go all along the line, and cut the Sunset rates and everything else. I mean as a retaliatory measure?

A. It would be valuable in that way only."

On re-cross-examination (Folio 3784) he testified:

"Q. Even if it were not a friendly connection, do you think the Union Pacific might attempt to use the Portland gateway as against the Southern Pacific at Ogden?

A. If it were not getting a fair share of the business through the Ogden gateway.

Q. You think it would attempt to use the Portland gateway?

A. I think it would, yes."

Mr. Babcock gave some very significant testimony on this subject, at Folios 3945-6:

"Q. Will you state your opinion, from your knowledge of the traffic, as to the value, if any, of that boat line in connection with the Union Pacific in any controversy which might arise between the Union Pacific and Southern Pacific as to divisions on California business?

A. It must have had a very commanding effect.

Q. For what reason?

A. Because it gave them a line of their own directly into San Francisco, water and rail. It enabled them to make such rates as they might see fit.

Q. Assuming that they took advantage of the dominant position which they possessed by reason of having this boat line as you have stated, and reduced rates by that route, what would have been the effect upon rates generally in Trans-Missouri territory?

A. Why, all rates would have had to work to whatever basis they established. If they lowered the rates, it would have had the effect of requiring a lowering of rates generally."

On cross-examination counsel for defendants succeeded in bringing out from Mr. Babcock direct testimony that the Southern Pacific management appreciated the strength of the Union Pacific in possessing this Portland line. (Folios 3968-9.)

"Q. If it were to attempt to move business by way of Portland and the boat line, it would have it farther from San Francisco when it got to Portland than at Ogden, wouldn't it?

A. Still, it would be a very practicable route.

* * * * * *

Q. Why?

A. Well, there is scarcely between any two competing points—it is rarely ever the case that the different lines competing for the traffic are lines of equal distance. For example, the distance of the Rio Grande and Burlington route from Ogden to Omaha is more than 300 miles greater than the distance via the Union Pacific from Omaha to Ogden, and yet the Rio Grande route has always done a very satisfactory share of the business. But there is an indirect benefit to the Union Pacific interests in that route via Portland in the influence it exerts over the friendly attitude on the part of the Southern Pacific toward the Union Pacific route—I speak of the old conditions—and I believe that it was so used, for the traffic manager of the Southern Pacific essentially admitted that to me.

Q. When?

A. Shortly after the lines went into the hands of receivers in 1893.

Q. Who, what traffic manager?

A. Mr. Charles F. Smurr, Freight Traffic Manager.

Q. Unfortunately he is dead, isn't he?

A. Yes, very unfortunately. He was the one that I dealt with entirely at that time. * * * I have talked on the same matter to Mr. Richard Gray. Unfortunately he is not now living, but if I may make an explanation: I had felt for a long time that the Southern Pacific Company in California was unduly (as we thought) aiding the Union Pacific in its through traffic originating in California and going east as against the Rio Grande route, and had complained of that to Mr. Smurr who was then

the Freight Traffic Manager, and the man with whom I dealt almost wholly; but they either evaded or would never admit it. And I charged them with using this Oregon line—that the closing of it had the effect of bringing about their friendly influence towards feeding the Union Pacific as against us. After the Union Pacific line was broken up by the receivership and the Oregon Short Line was operated independently of the Union Pacific and the Navigation Co., being over in California, Mr. Smurr asked me in a bantering way what I was there for. I said, 'I am over here as usual to visit you fellows —I know you.' He said, 'Well, I don't care what you do as long as you don't hurt us.' 'Of course,' he says, 'there was a time when the Union Pacific had that water line via Ogden and we had to look out for ourselves.'"

Mr. Severance: "Via Ogden or via Portland?

A. Via Portland, that was the conversation, and in that way I held that he admitted to me that they did use that line to influence the routing of California freight by the Union Pacific as against the Rio Grande.

* * * * * *

Q. When was that?

A. In the autumn of 1893, according to the best of my recollection.

* * * * * *

Q. Did they ever operate it with through traffic? That is the point; did the Union Pacific ever operate it with through traffic to California?

A. I think it is a matter of common knowledge that they did.

Q. From points east of Ogden?

A. Yes.

Q. That they used that line for California business?

A. That was the general understanding during the administration of Mr. T. J. Potter, as in charge of the Union Pacific road particularly."

Again Mr. Babcock testified, on re-direct examination, at Folio 3999, after having his attention called to Mr. Hawley's testimony that over 50% of the traffic from New York common points, and at times as high as 80% of the traffic from New York City proper had moved by the Morgan line:

> "Q. Suppose the Union Pacific in a quarrel with the Southern Pacific, they being independent, should use that boat line by Portland, which counsel has examined you about, in connection with its rail line, cutting rates that way, that is reducing rates that way, what would be the effect on the rates over the Sunset Route and the Gulf lines to California points?
>
> A. Break them down.
>
> Q. So that the Southern Pacific had a good deal at stake, had they not, in maintaining rates?
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> A. More than any other line.
>
> Q. Isn't that the reason why you say that the possession of the route to tidewater with the boat line gave the Union Pacific such commanding influence?
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> A. That is the main reason."

And again, on re-cross-examination (Folio 4004):

> "Q. I would like you to specify the instances and the means for which the Union Pacific could or might naturally use that power?
>
> A. They simply had that route at their disposal, and if occasion arose through any cause, if they found it necessary to use it, it was there to be used.
>
> Q. Against the Southern Pacific?
>
> A. Yes, sir; against the Southern Pacific, or if you please, against the other competitors—the Atchison, or the Northern Pacific, or any other route competing for California business. It gave them a through line under their own control, and thereby gave them a bulwark of defense for their traffic—their proportion of the traffic—against their competitors."

And again at Folio 4006:

> "A. They had that power, to use it at any time they saw fit, and all the other lines recognized that, and it was a very effective force in creating and maintaining respect for the Union Pacific on the part of all the other lines.
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> Q. In what way did they use it? How did they recognize it?
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> A. *Because they knew they had a line of their own. They were in a position to make any rates they saw fit, if they cared to exercise that right arbitrarily, and their making the rate would fix the rate for all the other lines.*" (Folio 4006.)

Mr. Stuyvesant Fish, for many years President of the Illinois Central Ry., testified, (Folios 1816-17), that for the purposes of competition it would be feasible to work San Francisco business over the Union Pacific to Portland, and thence down by boat.

Mr. Buchanan, a very intelligent traffic man who has charge of the freight department of the Proctor & Gamble Co. of Cincinnati, probably the largest manufacturers of soap and similar products, in the United States, was examined at considerable length on the various issues in this case After testifying at Folios 2356-60, that the transcontinental rates are made by the Transcontinental Association, chiefly by the Southern Pacific, Union Pacific and Santa Fe, and that they are the same by all roads, he said that the ownership of the through line to Portland by the Union Pacific, together with the boat line from San Francisco, would enable it to exercise influence in the adjustment of rates to California.

Mr. Knight, from December, 1888, to September, 1901, the General Agent of the Union Pacific at Chicago in charge of freight and passenger business, testified at Folio 3015, that the possession of the all rail line of the Union Pacific to Portland, and the boat line to San Francisco, was valuable as a good means of requiring fair treatment.

Traffic has at times moved to San Francisco from the east by way of Portland. While it was not usually essential or for the interest of the Union Pacific to work traffic by way of this Portland boat line, for the reason that its ownership was sufficient to insure fair treatment of its traffic by the Ogden Route, and its competition for business could be carried on more successfully as against the Sunset Route by working business by the direct line, still there were instances when it seemed to the interest of the Union Pacific management to move business that way, and some traffic was actually taken by that route.

For instance, Mr. Fowler, formerly General Agent of the Union Pacific at Philadelphia, testified, (Folio 2107), that in 1888 and the fore part of 1889, the Union Pacific business moved, to a large extent, for San Francisco via Portland, and by boat from Portland down to San Francisco, and that he was actively soliciting business for San Francisco, for that route at that time, and succeeded in routing a good deal of business that way, mostly drygoods

Mr. Wentz, who was the Commercial Agent of the Rock Island in Chicago for many years, and worked business in connection with the Union Pacific to the coast, testified that while he did not solicit business by the Portland route, he recalled at one time business moving that way, and he knew that that route was always open. (Folio 2851.)

Mr. Brolin, of the Skandia Furniture Co. of Rockford, Ill., stated on cross-examination that he recalled shipping that way occasionally. (Folio 2894.)

Mr. Montgomery, Traffic Manager of the International Harvester Co. in Chicago, stated that at one time there was some competition by this route, but he did not think it was very important (Folio 2959.)

Mr. Cribben, a stove manufacturer in Chicago, stated that their representative in San Francisco, wrote them about the route, and that a rate had been made that way, but they did not use it. This was in 1893 or 1894. (Folio 3093.)

Mr. Ryan of the Union Wire Mattress Co., Chicago, testified that his company had shipped by that route, as the adjustment of rates at that time was such that they could get traffic into San Francisco cheaper by that route. (Folios 3102-3104-3105.)

Mr. Rulofson testified to a shipment of wagons from Kenosha, Wis., by that route. (Folio 5025.)

Mr. Lent, Traffic Manager for a large number of shippers, testified at Folio 2175, that he had sent some nails and wire to San Francisco by way of Portland and the boat line.

Mr. Gano, of Cincinnati, for several years previous to the merger, employed by the Union Pacific at Cincinnati, testified that passenger business was routed to San Francisco by rail to Portland and thence by boat. (Folio 2314.)

Mr. Boltz testified, Folio 2579, that to the best of his recollection there was an arrangement whereby business moved for a certain period by the Union Pacific, Short Line and steamer lines via Portland for California points He had been agent of the Milwaukee and St. Paul in Cleveland, and working with the Union Pacific on transcontinental business. He also said that the Portland route was as feasible as the route by the Canadian Pacific and thence by boat from Vancouver to California. (Folio 2593.)

That the route was not impracticable was stated by Mr. Stubbs when under examination by counsel for defendants. We quote from Folio 3293:

> "Taking the experience during the last ten and a half years since this argument (on the Canadian Pacific differentials) was made, hasn't it been demonstrated that the Canadian Pacific route and the other routes by way of Puget Sound or Portland and water down to San Francisco, are impracticable at equal rates for the business between San Francisco and the east.
>
> A. I don't know that I should want to use the term 'impracticable:' to be accurate I should prefer to say that they were inefficient and uninviting routes, and would not take the business as against other routes all rail and the Sunset."

Mr. Stubbs, in his argument concerning the Canadian Pacific differential, treated this matter very fully, and in his examination reaffirmed the statements that he had thus made with reference to this line. At Folios 3280, et seq., Mr. Stubbs read into the record approvingly certain of these statements. Referring to the Canadian Pacific he said:

> "We aver that it does not introduce any necessary element of helpful competition which promises a freer and fuller exchange of commodities between San Francisco and its eastern markets of supply and consump-

tion. A single glance at the map will prove that San Francisco is served by a sufficient number of independent American lines, not only to handle all her freight, but to do so if it were increased many times over its present volume. I refer to these lines out via Portland, Seattle and Tacoma; out via San Diego, not touching the Central Pacific, besides the Central and Southern Pacific lines, and added to these the Pacific Mail Steamship Co., the original line, in connection with the Panama Route and the vessels of Cape Horn.

* * * * * *

The history of the operation of these lines proves beyond question the impossibility of any combination without the competition of the Canadian line which would not be possible with it. The public interest is fully protected in this respect by the natural, uncontrollable competition of the American lines, so that the Canadian line cannot find any substantial foundation for its claim of right to share in this traffic in the assertion that its services are necessary or desired by San Francisco merchants either to move the traffic or maintain helpful competition."

At the time Mr. Stubbs made this statement in 1898, the conspiracy charged in this complaint had not been formed. The lines leading out to Portland from the Missouri River and thence to San Francisco by boat were independent and free from the domination of Mr. Stubbs or the Southern Pacific organization. It has been demonstrated that this "uncontrollable competition" is quite largely subject to control, and it has been controlled by the unification in ownership and management of the lines wholly or partially dominated by the Union Pacific organizations.

When called as a witness on behalf of the defendants Mr. Stubbs presented an argument at Folios 6576 et seq, to show that the Union Pacific would have been foolish to have worked the Portland route, and that in such case

it would have been possible for the Southern Pacific to inflict some damage upon the Union Pacific by way of retaliation. In view of the statements made by Mr. Stubbs at other times, as disclosed by this record, and considering his relation to this case, and his responsibility in part for the existing situation, we will in all kindness omit any comment upon this testimony.

Mr. Munroe, testifying for the defendants, said in response to defendants' counsel at Folio 6803:

> "Q. A great deal has been suggested in this case to the effect that the possession of this boat line from Portland to San Francisco was a great big club which could be used to enforce more favorable terms from the Southern Pacific. I would like your judgment as to the effectiveness of that club.
>
> A. There might be that view taken of it, but the fact of the matter is, as far as divisions, joint, as between the Southern Pacific and Union Pacific, they were on a basis as originally established when the roads were opened in 1869; and we never felt that they were unjustly excessive as far as the Southern Pacific was concerned; and we saw no necessity of swinging a club when there was no injustice to be removed, and we were satisfied to have the divisions remain as they were. We did not have any differences."

While Mr. Munroe went on and further explained why it would be unprofitable, as it undoubtedly would have been unprofitable, for the Union Pacific to have actively worked the Portland line, as it was not as good a route as the direct line, still, it will be observed that he by this testimony concedes that the opinion of the various witnesses who testified to the value of this route to the Union Pacific in insuring fair treatment from the Southern Pa-

cific, is a reasonable view; and further he emphasizes the fact which Mr. Stubbs testified to when called by the complainant as we have shown, that the divisions between the Union Pacific and Southern Pacific were fair and they had no differences to adjust. All the complainant claims in this case for the Portland route so far as California business is concerned, and all that the witnesses for the complainant have testified to, is that the possession of a through route to the coast at Portland insured a continuance of the fair treatment always extended to the Union Pacific by the Central Pacific line, so that the Union Pacific was at all time in position to carry on the vigorous competition shown to have existed between it and the Sunset Route. Again at Folio 6863, Mr. Munroe testified:

"Q. The Southern Pacific controls business, and did when they were competing with you, from the east—control tonnage from Pittsburgh by New Orleans, from Cincinnati by New Orleans, and you had other tonnage that moved from the same region over the Union Pacific? Is that true?

A. Oh, yes; they had business and we had business.

Q. You both had business and both were trying to get business, weren't you?

A. Yes.

Q. Both trying to get all the revenue you could?

A. Yes.

Q. And if the transcontinental rates were cut it would have been a cut on all the rates from east of the Missouri River to the coast, naturally, wouldn't it?

A. Yes.

Q. And the result would have been, if you got into this war of rates, that you would both have suffered very severely, isn't that so?

A. Undoubtedly.

Q. And so long as your relations were satisfactory, your revenues were kept up, the rates were maintained, your divisions were fair, there was no occasion for you to get into that war; isn't that true?

A. That is true."

Mr. Stubbs testified at Folio 6641, after saying that rates were fixed in conference and that all the transcontinental lines unite in a common tariff, as follows:

"Q. Now, in fixing that through rate, the lines to the north Pacific points are considered, are they not? Their views are considered?

A. I think that they are members of the Association now.

Q. And their views are considered, and they all have a vote on the question?

A. Naturally. * * *

Q. And those towns out there, like Portland, San Francisco and Los Angeles—we will take Portland and San Francisco first—are wholesaling into the same territory to a large extent, are they not?

A. To some extent. Not so much so to-day as they were formerly.

Q. And that is one reason for keeping the rates to the coast uniform, is it not?

A. I think it has its influence.

Q. So that all of these things, that is, the interests of all these communities and the interests of the various transcontinental lines are all considered when you come to make up a schedule of rates?

A. The representative at these meetings, of every road that is a member of the Association, has his opportunity to express his views and his judgment about it, and his desire, and if it is a question that is found necessary to put to a vote, he has an opportunity to put his vote."

Mr. Fee, Passenger Traffic Manager of the Southern Pacific, testified that transcontinental fares from Chicago and the East to California via St. Paul, Portland, and via the Union Pacific, Huntington and Portland, the ocean and the Shasta Route, are practically the same as via Omaha, Ogden and the Southern Pacific direct, with the exception that the 30-day one-way rate stop-over ticket and the round-trip transcontinental excursion rates, were somewhat higher than the direct line rates. That situation has prevailed since 1887. He stated that about 4% of the through passenger business from the East to California is carried via Huntington and Portland via the Union Pacific, and about a half or a third as much over the Rio Grande and Short Line. (Folios 7833-4.) A small amount of the transcontinental round trip business is handled by the Ocean Line between Portland and San Francisco. (Folio 7831.)

It would seem that nothing more need be said in support of the proposition that the ownership by the Union Pacific of a through line to the coast put it in a position to maintain its independence as a strong competitor for all business that it might seek to move over its rails.

THE FACT THAT BUSINESS IN LARGE QUANTITIES WOULD MOVE AT A REDUCED RATE FROM THE EAST BY WAY OF PORTLAND WAS CLEARLY DEMONSTRATED BY THE SUCCESS THAT ATTENDED THE CANADIAN PACIFIC FOR A SERIES OF TEN OR ELEVEN YEARS IN HANDLIN . A LARGE VOLUME OF BUSINESS TO SAN FRANCISCO FROM THE ATLANTIC SEABOARD AND INTERIOR STATES.

The Union Pacific was in a better position, if anything, to go into a competition of this character than was the Canadian Pacific. The line from New York and Boston to San Francisco by way of Portland and the boats was a little shorter than the Canadian Pacific Line to Vancouver, and thence to San Francisco by steamship. The Canadian Pacific, however, made such inroads on business and created such havoc in the rate situation by insisting upon doing business by this route at a less rate than that charged by the American lines, that the latter put forth every effort to have it discontinued, and finally induced the Canadian Pacific to submit to an arbitration to determine whether or not it should be accorded a differential. In this arbitration, as we have heretofore stated, Mr. Stubbs was the chief spokesman for the American lines, and he was fully examined with reference to the Canadian Pacific differential which had been frequently mentioned in the testimony previous to the time he was called as a witness. This testimony will be found at Folios 3241 to 3332, and is immediately followed by the full report of this arbitration, which, in connection with Mr. Stubbs' testimony, was inserted in the record by consent of both parties. To this we call the special attention of the court, for it shows the view of experienced, able traffic men upon the competitive conditions existing in the Trans-Missouri territory up to within about two

years of the formation of the conspiracy set forth in the complaint. It is a most luminous exposition of the whole subject, as it existed at that time: The comparative strength and efficiency of the different lines, the manner in which transcontinental rate associations had operated, the methods adopted to maintain rates, the fact that a subsidy had been granted to the Panama Route, (which as we have shown is on the west side of the Isthmus, made up of the Pacific Mail Steamship line, the majority of the stock of which is and for about ten years last past has been owned by the defendant Southern Pacific Company,) and that in 1896 when it was attempted to reorganize the Transcontinental Association, it was essential to make a new contract with the Panama Route and to come to an understanding with the Canadian line and to do this it was necessary to have the unanimous ratification of the American lines, and the deal failed solely because the Union Pacific receivers declined to join in it. (Folios 3247-48.)

At Folio 3443 the court will find in Mr. Stubbs' statement the boundaries of what is known as the Transcontinental Association territory, namely, San Francisco on the west, and on the east what he speaks of as the Missouri River line. He said:

> "It means that any business to or from San Francisco which passes this line—crosses it en route, is subject to the Transcontinental Association, or was when it was alive, and is now subject to this controversy no matter whether it originates in Florida or in Maine, or in the Province of Quebec, or whether it originates on this line—whether it originates on it or goes across it from any of these points—to or from San Francisco—it is the subject of this controversy."

Mr. Stubbs, with his usual clearness of statement, explains in his argument, Folios 3480 to 3494, the likeness of the lines to San Francisco made by the Great Northern, and the Northern Pacific to Puget Sound points, and thence by steamship and the routes from the Missouri River to Portland, and to San Francisco by steamship, on the one hand, to the line of the Canadian Pacific by rail to Vancouver, and thence to San Francisco by steamship, on the other, contending successfully before the arbitrators that these lines being equal and not merely on paper, as he puts it, were as much entitled to do business at a differential rate below the all rail lines, as was the Canadian Pacific.

Mr Kerr, representing the Canadian Pacific, gave the history of the Canadian Pacific differential, which shows the dealings of the American lines with each other and with the Canadian line, beginning at about the middle of Folio 3341 on page 2048, and concluding at Folio 3350. From this it appears that the Canadian Pacific maintained a lower rate than the all rail lines from about December, 1887, down to the making of the award of the arbitrators holding that that line was not entitled to a differential, which award is dated October 19th, 1898, Folio 3677. Therefore the differentials continued for a period of about eleven years. During the first part of this period a differential computed in a certain number of cents per hundred pounds was conceded to the Canadian Pacific by the all rail lines. Later the Canadian Pacific adopted independently the practice of charging ten per cent less than the transcontinental rates. We have deemed it important to introduce testimony with reference to the Canadian Pacific differentials because of the similarity between its line and that of the Union Pacific to California by way of Portland, to show that the Portland

route is a feasible one, that business could be moved by that route in a substantial volume, and that the talk of the Union Pacific being bottled up at Ogden is an absurdity. Mr. Morton testified at Folio 1374:

> "A. The Canadian Pacific was an active competitor for business from all the eastern portion of the United States for San Francisco at one time and operated on a differential rate.
>
> Q. How did they handle the traffic, to what points?
>
> A. They took it up via Winnipeg and out to Vancouver, and from there I think it went down by boat to San Francisco."

Mr. Hawley testified, at Folio 1415, that the Canadian Pacific maintained a differential and handled business to some extent for California.

Mr. Allen recalls that traffic moved on the Canadian Pacific to San Francisco from New York and that the New York Central participated in some of it. (Folio 1515.)

Mr. Johnson, Traffic Manager of the Heinz Company (57 varieties), at Pittsburg, formerly for several years agent in San Francisco of the Chicago Great Western Ry., testified that when he was living in San Francisco traffic moved to that city by the Canadian Pacific via Vancouver and the Pacific Coast Steamship Co. (Folio 2050.)

On cross-examination, he said that the volume of traffic moving that way was quite large during the time of the differential. (Folio 2055.) A great deal of dead freight was routed that way over the Great Western from Chicago to Minnesota Transfer. He knew of lots of 400 or 500 cars of certain commodities like tin plate. (Folio 2056.)

He estimated that 50 or 60 carloads a month moved by that route over the Great Western to Minnesota Transfer, and thence by the Canadian Pacific during the entire time that he was in San Francisco. (Folio 2057.)

On re-direct examination, he testified that in addition to the 50 or 60 cars a month moving over the Great Western to Minnesota Transfer for transportation by this route, traffic was moving over the other lines from Chicago to St. Paul in the same way. (Folio 2059.)

On re-cross-examination (Folios 2062-3), he said the Rock Island, the St. Paul, the North-Western and the Burlington worked business by that route as against the all rail route, because if they had not, they would have lost the business on account of the differential being in.

Mr. Ogden, in charge of the traffic of Jones & Laughlin, of Pittsburg, the largest steel manufacturers in the United States outside of the Steel Corporation, testified, at Folio 2143, that his company shipped a considerable amount of traffic to San Francisco by way of the Canadian Pacific and the boat lines during the time of the differential.

Mr. Blair, Secretary of the Nile Tool Works Co., of Hamilton, Ohio, the largest manufacturer of machine tools and heavy machinery in the United States, remembered making a shipment to the Mare Island Navy Yard in San Francisco Harbor by way of the Canadian Pacific and the boat line when the differential was in. (Folio 2422.)

Mr. Gothlin testified that when he represented the Wisconsin Central he secured a shipment of 30 or 40 cars of wire from Pittsburg to San Francisco by the Canadian Pacific and the boat line. (Folios 2438-9.) On cross-exam-

ination, Mr. Gothlin testified that the Wisconsin Central joined with the Canadian Pacific and put in oil rates to enable the independent oil men in Pennsylvania to get into San Francisco. This was about 1887 or 1888. (Folio 2458.)

Mr. Rheinstrom, distiller, shipping to the west from Cincinnati, and also shipping fruits from California to the east, testified to having shipped both ways by the Canadian Pacific and the boat line. (Folio 2479.)

Mr. Coakley, Division Freight Agent of the American Steel & Wire Co., for many years in the traffic business, either with railroad or shippers, testified that quite a large volume of business used to move from Pittsburg to San Francisco by the Canadian Pacific and the boat line when the differential was in. The character of the traffic was general, consisting of iron, steel and merchandise. (Folio 2556.)

Mr. Boltz, Traffic Manager of the National Petroleum Association, which consists of over 30 independent oil refiners, of whose traffic he has charge, testified that he had known of considerable business moving via the Canadian Pacific Vancouver route to San Francisco in the old days by reason of the differential rate in effect. (Folio 2575.)

Mr. Rand, in the employ of the Lake Shore Railroad at Cleveland, and for some time prior to the merger in the employ of the Union Pacific as freight solicitor, testified to shipments moving to California by Vancouver and the boat line. He recalls carloads of sewing machines going by that route. (Folio 2628.)

Mr. Brolin, Secretary and Treasurer of the Skandia Furniture Co., Rockford, Illinois, very large manufacturers of household furniture, shipped some traffic by the Canadian Pacific and the boat line when the differential was in. (Folio 2893.)

Mr. Philipp, of Milwaukee, President of the Union Refrigerator Transit Co., testified that the brewers in that city shipped bottled beer to San Francisco by the Canadian Pacific under this differential rate, and that San Francisco was the great distributing point for beer on the coast. (Folio 2909.)

Mr. Knight, from 1888 to 1901 General Agent of the Union Pacific at Chicago, testified that a great deal of business moved by the Canadian Pacific route during the existence of this differential; that it consisted of sugar and pork in barrels and boxed stuff of all kinds. (Folios 3018-19.) On cross-examination, he was asked how this traffic moved, and answered:

> "A. Why, it went through St. Paul over the various lines. I have known of their going to Kansas City and moving quite large shipments out of Kansas City up by way of St. Paul and then taking it up over the Soo Line by way of Minot and out over the Canadian Pacific, and then down to San Francisco by boat." (Folio 3032.)

Mr. Ryan, in charge of the traffic of the Union Wire Mattress Co., Chicago, shipped to San Francisco by the Canadian Pacific at the differential. (Folio 3101.)

Mr. Wait, in charge of the shipments of Hibbard, Spencer & Bartlett Co., Chicago, one of the largest hardware

concerns in the country, shipped to California by the Canadian Pacific route via Vancouver, part of the traffic originating at Chicago and the east. (Folio 3159.)

Mr. Wilmore, Traffic Manager of the Sefton Manufacturing Co., Chicago, manufacturers of all kinds of paper goods, testified that he had shipped to California by the Canadian Pacific-Vancouver route, the traffic being delivered to the Soo Line at Minnesota Transfer. (Folio 3165.)

On cross-examination it appeared that these shipments were made within the last few years at the *same* rates as the direct lines. (Folio 3166.)

Mr. Jennings, Manager of the Transportation Department of the American Cottonseed Oil Co., the largest concern of the kind in the United States, and formerly Traffic Manager of the N. K. Fairbanks Co., which is now a subsidiary company of the American Cottonseed Oil Co., testified that he used to send traffic, such as soap, from St. Louis to San Francisco by the Canadian Pacific and the boat line from Vancouver. (Folio 3186.) It is an important matter to recall that so anxious were the American lines to do away with the Canadian Pacific differential that after the differential in its original form of a difference in cents per hundred pounds had been in force for about three years, an agreement was made by which the Canadian Pacific agreed for a year to put in the same rates as the transcontinental rail lines, being paid a cash subsidy of $500,000 a year by the American lines for so doing, with the understanding that there was to be credited upon that subsidy all revenue received by the Canadian line upon this class of business. Stubbs' testimony (Folio

3252). Kerr's statement upon the arbitration (Folios 3384-5.)

Mr. Connor, who was for several years Freight Traffic Manager of the Pacific Coast Steamship Co., the line of ships over which the Canadian Pacific traffic has always moved to San Francisco, and who, as we have shown, has had great experience in traffic matters on the coast, testified that transcontinental business moved to San Francisco in connection with the Pacific Coast Steamship Co. over all three northern lines, to-wit, the Canadian Pacific, the Great Northern, and the Northern Pacific, at an equality of rates. It consisted of general merchandise from the far east, Missouri River points and the east, and flour and grain from western points on those lines. He also remembered the time that the Canadian Pacific had a differential on San Francisco. (Folio 4775.)

Mr. Adams, for many years Commercial Agent of the Rock Island in San Francisco, found the Canadian Pacific moving traffic during the existence of the differential. (Folio 4884.)

Mr. Clifford testified that he knew that for years a great traffic came into San Francisco by the Canadian Pacific-Vancouver route in connection with the Pacific Coast Steamship Co. (Folio 4912.)

Mr. Cooper, Assistant Manager of the Pacific Coast Steamship Co., who has been connected with that company in different capacities for many years, testified that transcontinental freight had moved by his line in connection with the Great Northern and Northern Pacific to some

extent. He was then examined with reference to the situation at the time of the Canadian Pacific differential, and said he was with the Pacific Coast Steamship Co. during quite a number of years while that rate was in effect. He stated that they carried an average of 300 tons or so every five days by that route, consisting of miscellaneous merchandise originating practically everywhere east of the Missouri River. (Folio 4936.) This is certainly quite an important traffic, and it should be recalled that this differential was taken out eleven years ago, and since then the largest development in the history of the west has taken place.

Mr. Rulofson, who was for many years with Baker & Hamilton, wholesale hardware merchants at San Francisco, testified on cross-examination, that they moved some of their shipments by the Canadian Pacific route when the differential was in, although they did not like to encourage the differential. (Folio 5026.) It appears by the arbitration that the merchants in San Francisco did not like to have this differential in because of the fact that the rates were demoralized by it; that is, apparently the all rail lines were cutting rates under the published tariff because of the existence of this differential, in order to hold their business, and the merchants had no assurance that they were on a parity with each other as to rates.

Mr. Rumpf, in charge of the traffic of the California Wine Association, with a tonnage of 1,500 cars a month, testified that they shipped over all lines, and when the differential rate was in, they shipped considerable traffic moving to various points in the east by that route. (Folios 5100-5101.)

An attempt was made upon the cross-examination of Mr. Markham and others to have it appear that if the Union Pacific should engage in a war for California business to maintain its position as against an unfair exaction of the Southern Pacific, it could not rely upon its connections East of the Missouri River to join in the same. We have before called attention to the fact that Mr. Markham stated that the Union Pacific was perfectly able to defend itself, as it could do business, if necessary, on the sum of the locals. The experience of the Canadian Pacific, however, shows that it would never have been necessary. There are so many lines of railway operating East of the Missouri River boundary each seeking traffic, that it would be an impossibility to unite them in any scheme to assist the Southern Pacific, their common competitor, against their friendly connection, the Union Pacific. It appears by the testimony which we have analyzed, that during all the years that the Canadian Pacific maintained its differential it was hauling a large traffic from the interior of the country as well as from the Atlantic seaboard, and was operating in connection with many of the lines in the central part of the country, shipments moving up from all over the Mississippi Valley even from St. Louis to Winnipeg, and thence west to Vancouver and down to San Francisco. The matter of railway competition cannot be determined by any theory. The lower court disposed of this case upon a theory adopted by it that the Union Pacific was in no position to protect itself. Not only do substantially all of the witnesses disprove this theory, but the practical experience in railroading disclosed by the Canadian Pacific differential, running over a period of eleven years, is conclusive upon the subject. The Canadian Pacific Railroad was a foreign road. It was subject to all the delays

and difficulties attending the shipments of merchandise out of the United States, and again into the United States through the custom houses. It did not reach any of the Atlantic seaboard cities in the United States over its own rails, much less any of the cities in the interior of the country South or East of St. Paul, where it may fairly be said to have penetrated by its control of the Soo Line so-called. But all of the roads leading up to St. Paul were carrying traffic and turning it over to the Canadian Pacific, as they would have been delighted to have carried traffic to Omaha and turn it over to the Union Pacific under like conditions. It was a physical impossibility for the Union Pacific to be excluded from the California traffic. The Southern Pacific would not only have lost the business it was carrying at remunerative rates from Ogden to San Francisco, but its revenue upon traffic moving over its long line from New York and from New Orleans would have been so shot to pieces that there would have been a speedy ending to any effort to "bottle up" the Union Pacific at Ogden, to use the expression of some of the witnesses, which was adopted by the trial court.

THE PURPOSE AND EFFECT OF THE CONSOLIDATION OF THE TRAFFIC DEPARTMENTS HAS BEEN TO DESTROY COMPETITION.

Mr. Miller testified that the duties of a general freight agent are to look after freight traffic, and that the business is solicited under his instruction. He makes the rate, and is generally responsible for freight traffic conditions. He further testified:

> "Q. And it is the duty of a general freight agent, is it not, to secure all the business he can and get all the revenue he can for his road, so long as it is done in a proper manner?
>
> A. I think so.
>
> * * * * * *
>
> Q. So you owe to the O. R. & N. the duty of securing all the business and traffic you can for it, and to the Southern Pacific of securing all the business and traffic you can for it?
>
> A. Yes, sir." (Folios 840-1.)

This definition of the duties of a general freight agent will probably be concurred in by any expert railway traffic official. Hence, if the functions of the traffic director, who is the real freight traffic manager, and the so-called freight traffic managers who report to him, and the general freight agents, some of whom report to the traffic director, and some of whom report to the so-called freight traffic managers as to a portion of their business, are consolidated in the manner stated, and if the duty of the general freight agent is to have the business solicited, and if the general agencies which are in active and personal touch with the solicitation, are consolidated, as has been done in the case of the Union Pacific and the Southern Pacific, with rare

exceptions, it is apparent that competition between competing lines so put under a common management, is eliminated. A fanciful idea has been born out of the necessities of this extraordinary situation, to the effect that competition can go on just the same, even though there is a common head to the various parts of the system, which were formerly in competition. Of course, that is absurd on its face, but in the case of the Union Pacific and Southern Pacific systems, the farce of maintaining separate commercial agents who come in immediate contact with the shipper, has been abandoned, except in the case of New York City and San Francisco, and those offices, as we will show by the testimony, have practically been consolidated because of the instructions given as to the way business should be worked.

Mr. Justice Peckham, in the opinion in the case of *Joint Traffic Association v. United States*, 171 United States, 505, called particular attention to the provision in the agreement there under consideration, by which separate traffic agencies were to be discontinued, and a common agency established, as showing clearly the intention of the parties to the agreement to eliminate competition.

Mr. Hawley, who is conceded to be one of the most expert traffic men in the United States, testified (Folio 1418):

> "Q. What change, if any, was made in the traffic organization of the Southern Pacific in the east after the purchase of the stock of the Southern Pacific by the Union Pacific?
>
> A. With respect to agencies?
>
> Q. Yes, sir.

A. I think there was a pretty general consolidation of the agencies with the exception of New York; that was not consolidated.

Q. Why was not that consolidated, if you know?

A. I think I had as much to do with that as anybody. I opposed it.

Q. You opposed the consolidation?

A. Yes.

Q. But outside of New York the agencies were consolidated?

A. Yes.

Q. From your knowledge what was the effect of the consolidation of those agencies on the competition formerly existing between the two lines?

A. It eliminated it to a very great extent.

Q. What are the objects of maintaining the commercial agencies of transcontinental lines here in the east?

A. The principal object is to secure business, I suppose." (Folio 1418.)

He further testified, when asked as to the methods of obtaining business, that it was by personal solicitation as well as by correspondence. (Folio 1419.)

Mr. Hawley is a man of great ability, as is shown by his rise in the railroad world. He had strength enough in the organization to prevent a consolidation of the agencies in New York while he was representing the Southern Pacific, and apparently it was only through his intervention that the scheme of an absolute consolidation everywhere failed, and the fact that the consolidation in New York was stopped only by Mr. Hawley is very significant evidence of the intention of the promoters of the merger under discussion to wipe out all semblance of competition everywhere.

Mr. Throckmorton testified at Folio 1468, when asked as to the service soliciting agents performed for shippers:

"A. If they are good soliciting agents they take care of his business for him as much as they can; they explain the movement of the freight, give him the best routes; the best rates, and look after his business in general and keep him posted as to any changes in rates.

Q. Trace freight?

A. Yes, sir, and take care of his claims for him. I always regarded him as practically the agent of the shipper. You are paid by the railroad, but you would not get any business unless you were the agent of the shipper. Try to give him the best information and the best rates possible."

On cross-examination, he said it was also the duty of a soliciting agent to cultivate connections for the interchange of business, practically reciprocate. On re-direct examination, he stated that the lines between the Missouri River and Chicago have commercial agencies both on the Atlantic and Pacific Coast, and the Union Pacific agencies worked with those commercial agents exchanging traffic, which it was able to secure east bound, as against the Sunset Route in exchange for traffic moving to the west. (Folio 1495.)

Mr. Chumasero, in charge of the traffic of the Royal Baking Powder Company, which, of course, is a great shipper, testified, when asked how the soliciting agents endeavored to get his traffic:

"A. Well, the main factor now is the service, the length of time, the general handling of the goods, the condition in which they arrive, and the *personality of the soliciting agent.*

Q. All of those elements enter into the securing of traffic?

A. All those elements; yes, sir." (Folio 1498.)

If the personality of the soliciting agents is an element, is a factor, of course the consolidation eliminates that factor.

Mr. Allen, General Eastern Freight Agent of the New York Central, testified to the fact that traffic was often secured by swapping carloads of unrouted business with connections. (Folios 1513-15.)

Mr. Johnson, Traffic Manager of the Heinz Co., Pittsburg, and previously for a long time in the railroad service, testified (Folios 2051-52):

> "Q. You had some experience in soliciting traffic and you are having some experience now in having trraffic solicited. What are the principal efforts that are put forth and what are the advantages that are offered by freight solicitors in endeavoring to get business generally?
>
> A. The expediting of shipments; prompt care of the same; tracing, in case of delays; advising dates of delivery.
>
> Q. Is anything done in reference to claims for damages?
>
> A. Yes, the prompt settlement of claims is a very important item."

The absurd position in which soliciting agents are put by this consolidation was developed in the testimony of Mr. Bogert, the agent of the San Pedro line in Pittsburg. Mr. Herring, formerly the agent of the Southern Pacific, competing with the Union Pacific for coast business, since the consolidation has been a joint agent. Mr. Bogert testified as follows (Folio 2079):

> "Q. Do you come in contact with Mr. Herring and his assistants in the solicitation of business?
>
> A. Yes, sir.

Q. How is that?

A. We ask his assistance; we don't need it entirely, you know.

Q. You ask his assistance in routing business?

A. Yes, sir.

Q. That is, you ask his assistance as the agent of the Union Pacific?

A. That is all.

Q. And you endeavor to get Mr. Herring to forget for the time being that he is agent of the Southern Pacific?

A. That is the idea.

Q. And simply be agent of the Union Pacific with you, is that right?

A. Well, he acts quite neutral.

Q. That is, as I understand it, Mr. Herring routes, we will say Union Pacific business out of here, and he is quite neutral between you and the Southern Pacific beyond Ogden and Salt Lake?

A. I think so.

Q. Who is there here, then, that is looking after the business that Hawley used to try to send by New Orleans and the south?

A. I assume it is being done in Mr. Herring's office."

He further testified that they also show neutrality as between his route and the Sunset, and do not try to get business away from them. A half interest in the San Pedro road being owned by the Union Pacific, of course Mr. Herring, as a Union Pacific agent, could not refuse to lend his assistance to secure the routing of traffic by the Union Pacific and the San Pedro. On the other hand, Mr. Bogert thinks some one in Herring's office is looking after the interest of the Sunset Route, but the latter does not try to get any business away from the San Pedro, and Herring does not try to route business through Ogden to Los Angeles in opposition to or in competition with the San Pedro.

although if the business moves over the San Pedro from Salt Lake, the Southern Pacific, for which Mr. Herring is also agent, gets no part of the revenue.

At Folio 2080 he testified with reference to the duties of the soliciting agents, that he thought the shippers liked to see as many people in the field as possible to keep competition rife, to make time, insure good facilities and prompt settlement of damages.

Mr. Henry, Traffic Manager of the Standard Sanitary Co., formerly with Pressed Steel Car Co. and American Window Glass Co., in charge of traffic, testified, at Folio 2099, speaking of various soliciting agents trying to work business to the coast by New Orleans, said:

> "A. We give them some business that way on account of our friendly feeling toward the representatives here."

At Folio 2101 he said:

> "The personality of a representative nowadays has considerable influence in securing business; that is, his activity in showing his disposition to do what he can to facilitate your shipments and your business in general, in small ways which he can within the law."

Mr. Henry testified that at present Mr. Herring and his assistants solicit freight both by Union Pacific and Southern Pacific, and never intimate to him that they have any preference.

Mr. Fowler, who has been in the railroad service at Pittsburg and Philadelphia for many years, testified at Folio 2109, that the principal elements that entered into

the solicitation of the business were the personality of the gentlemen soliciting the business, and the service they were able to render, such as securing through cars, close connections, and through trains on the different roads that carry the business, time in delivery, keeping track of the shipments in the way of tracing them, and keeping shippers posted as to the movement from time to time, looking up rates and examining tariffs, which are very complicated.

Mr. Fowler said (Folio 2113), that there is now no competition between the Union Pacific and the Southern Pacific at Pittsburg.

Mr. Parr, of the Diebold Safe & Lock Co., speaking of the manner in which soliciting agents get business, testified (Folio 2125):

> "A. One thing is personality—that is—friendship—an agent who has been calling on us for many years. That is one thing. And another thing is that they look after the shipment, trace it, follow it up, and advise us when it leaves the different junction points; that is, when we are in a hurry for a shipment; and we consider that quite a favor."

He further said that the more efficient a man was in doing that, the more inclined he was to give him the business.

Mr. Townsend, the Traffic Manager of the National Tube Co., who is a friend of Mr. Herring, testified, when asked if there is now any competition between the Union Pacific and Southern Pacific for transcontinental business at Pittsburg:

> "A. Well, I suppose not. One through line." **(Folio 2134.)**

On cross-examination, at Folio 2136, he testified that the representation of soliciting agencies in Pittsburg is a good deal bigger than it used to be. In the last five years there have been over ten new agencies established there. At Folio 2138 he was asked by defendants' counsel as to the effect of the solicitation upon the routing of traffic, and replied:

> "A. The result is that we would naturally give the new routes a chance, give them some business. If they make good, we give them some more. Some of them have."

On re-direct examination, Mr. Townsend testified (Folios 2139-40) that he was not aware of any other instance except the Union Pacific and the Southern Pacific where agencies that were formerly competing with each other have been consolidated. He further said that the Pittsburg district originates more tonnage than any other district in the United States.

Mr. Ogden, Traffic Manager of Jones & Laughlin Steel Co., after testifying, as we have before shown, that prior to 1901 the Union Pacific and Southern Pacific agencies in Pittsburg were competing for business, testified (Folio 2145) that now Mr. Herring represents both lines, and that he and his assistants call on Mr. Ogden for business and they do not give any preference of one line over the other. He was then asked what services soliciting agencies performed for shippers, and replied:

> "A. Why, it is the personality of the agent who calls on them, and the services that he has to offer in behalf of his company, such as the tracing of freight, investigation of claims, loss, overcharge

and damage, the taking up of the questions of irregularities, if there are any, or, you might say, too high classification of material before the classification committee, have his company take them up, give attention to them and see if they cannot be corrected, and better equalization of classification in rates of the different commodities.

Q. Mr. Ogden, from your experience, which has been very considerable, apparently, do you regard these agencies as useful to their lines in getting traffic?

A. A very important adjunct to the railroad.

Q. They secure the routing of a great deal of traffic, do they not?

A. Yes, sir, they are a great help to the shippers."

On cross-examination, counsel for defendants tried, without success, to develop from Mr. Ogden, that there was no reason why the Union Pacific and Southern Pacific should maintain separate agencies, but Mr. Ogden said:

> "A. I am for the agents; I want to see all the agents in Pittsburg I possibly can." (Folio 2147.)

He further said, on re-direct examination (Folio 2152), that if one agency was working for the Sunset Route and the other agency working the Union Pacific, it would make a difference in the distribution of traffic. On re-cross-examination, he developed the fact that in the case of large manufacturers, the routing of traffic was sometimes determined by the question as to whether the solicitor's road was buying from the manufacturer. (Folios 2153-4.) He further developed this idea on re-direct examination. (Folios 2156-7). On further cross-examination (Folio 2161) he testified:

"Q. What do you mean, then, by saying that if they bought more from you, you would give them more by way of New Orleans?

A. We could do that, but at present they are hooked up with the Union Pacific, and we consider that one line to the Pacific coast, to San Francisco."

And again he said (Folio 2164):

"A. Of course if the Southern Pacific would come to us and demand of us, on account of their purchases, that we ship via New Orleans, it would have to have consideration at our hands; they could do that to-day.

Q. But they are satisfied now, you mean, with your shipments by way of Ogden?

A. Yes, sir.

Q. It is immaterial to them whether you ship by way of Ogden?

A. It is immaterial how we send it to them."

Mr. Lent, Traffic Manager for a large number of shippers in Pittsburg territory, testified (Folio 2174), speaking of soliciting agents:

"A. The solicitation on their part seems to be more in the matter of advocating the service that the road is capable of giving, and supplying rates and tariffs, and giving such information as helps the shipper out on matters that the shipper cannot have as intimate a knowledge of as the agent.

Q. Do you regard these agencies as efficient and useful to railroads in securing business?

A. Yes, sir."

He further said that personal friendship for the agent entered into the matter of securing business. (Folio 2175.)

On cross-examination of this witness, counsel for defendants developed the fact that there is still competition through the agency of the Santa Fe. On re-direct examination, he testified as follows (Folio 2184):

> "Q. Suppose the Santa Fe should be represented by the same man that represents the Southern Pacific and Union Pacific; suppose Mr. Herring should spread himself out a little further, and take in the Santa Fe; can you then see how there would be any competition in these through routes to the coast between the Santa Fe and the Southern Pacific and the Union Pacific?
>
> A. The competition would be eliminated.
>
> Q. Therefore, when Mr. Herring takes in two of those three routes, competition is eliminated between those two and only exists between the two together and the Santa Fe?
>
> A. That is correct."

Mr. Snape, Routing Agent for large pottery works at East Liverpool, Ohio, says that since 1901 Mr. Herring solicits their traffic, but expresses no preference between the routes. (Folio 2198.)

Mr. Watson, in charge of the traffic of the Earthenware Co. at East Liverpool, Ohio, for many years, produced a form of routing card now used by Mr. Herring, which is introduced as Exhibit 112 (Folio 2208). This carries upon the heading the names of the three lines making up the Union Pacific system, also the Southern Pacific Co., the Houston & Texas Central Railroad, and the San Antonio & Aransas Pass Railway, which shows that Mr. Herring not only represents the consolidated Union Pacific and Southern Pacific, but also the Texas lines of the Southern Pacific, which are ostensibly run separately. Exhibit 113 is

the card of the Traveling Freight Agent, which carries the names of the Union Pacific system and the Southern Pacific. (Folio 2209.)

Mr. Crowley, of the Carnegie Steel Co., testified (Folios 2238-9) as to the efforts made by freight solicitors to get business, that they called on the shippers regularly and looked after the details of freight rates and offered them any assistance they could in looking after material en route, so that it gets to its destination in proper time; trace the shipment, and in his opinion the personal relations between the solicitors and shippers has its effect in getting business for the roads, and it is a useful adjunct to a railroad in getting business, to maintain commercial agencies.

Mr. Thomson, a great friend of Mr. Herring, and Traffic Manager of the Oil Well Supply Co., after having stated some of the things that were done by commercial agents for the shippers, testified (Folio 2273):

> "Q. You regard a man in Mr. Herring's position as very useful to the shipper, do you not—commercial agents?
>
> A. I should say so; if you would get in the business for a little while, you would very soon find out.
>
> Q. That is what I understand; they are very useful, and as far as you know, the various lines have independent solicitors, independent agencies, most of them?
>
> A. Yes."

He then enumerated the Canadian Pacific, the Great Northern, the Northern Pacific, and the Santa Fe as having separate agents, and added that Mr. Herring solicits

just as strongly from him to-day for the Union Pacific as he did prior to his taking hold. At Folio 2275, after speaking of the kindly smile worn by Mr. Herring when he called on him for business, he said that sometimes when he had a lot of shipments to make, Mr. Herring said he wanted to get them by the Union Pacific; sometimes he said he wanted to get them by Southern Pacific, and then testified:

> "Q. Does he try at the same time to get them for both the Union Pacific and the New Orleans route?
> A. No, sir, he couldn't very well."

Mr. McGrew, in charge of the traffic of the Standard Underground Cable Co., after stating that they formerly shipped all rail by New Orleans, but stopped about five or six years ago, was asked (Folio 2280) how he happened to do that, and answered:

> "A. Well, one of those psychological events, perhaps.
> Q. Who happened on the ground at the time that psychological phenomenon occurred?
> A. Everything seems to be blamed on Mr. Herring.
> Q. Then the diversion was because of the difference in the attitude of Mr. Herring, was it not? Instead of wanting to send the stuff by New Orleans, he wanted to send it by Ogden?
> A. I think mainly so."

On cross-examination, he stated (Folio 2282) that Mr. Herring indicates at times a preference for shipments by way of Omaha and Ogden as against New Orleans.

Mr. Gano, who has been in the railroad service in a traffic capacity, after testifying to the former competition

that existed out of Cincinnati, and that Mr. Connor now represents both lines, testified, at Folio 2302, that the signs displayed by his office in the windows embodied all the various companies, including the steamship lines out of San Francisco, as well as the Portland & Asiatic Co. At Folio 2312, he gave similar testimony as to the functions and usefulness of the commercial agents, to that given by other witnesses.

Mr. Williamson, Commissioner of the Receivers' & Shippers' Association at Cincinnati, also testified, at Folio 2326, as to the usefulness of soliciting agents to shippers and their ability to procure business for their companies.

Mr. Buchanan, Traffic Manager of the Ivory Soap people, Proctor & Gamble Co., testified that since Mr. Connor has represented both lines in Cincinnati, he didn't think he discriminated between the routes. At Folio 2346 he said that a man of Mr. Connor's character, actively engaged in working for a line of railway, is able to get a considerable amount of business through his personal standing and personal solicitation.

On cross-examination, he was asked whether he would be in a better situation if the Union Pacific and Southern Pacific were separately represented, and in reply said he would like to know who would be back of the agent—how far they would be separate above him. (Folio 2348.)

On re-direct examination, he spoke of the fact that in addition to services like tracing cars and getting cars, he has discussed with Mr. Connor the matter of rates, payment of claims and classifications and contemplated changes in rates. (Folio 2349.)

At Folio 2351 he testified:

"Q. Now, Judge Lovett endeavored, I judge by one of his questions, to get you to testify that you don't think that your company or any company would be any better off with a separate representation of roads, but you did not seem inclined to wholly agree with that. You are not of the opinion, are you, that it would be as well for the shippers if all the transcontinental lines from the Missouri River to the coast had one set of officers and representatives?

A. No, sir."

On re-cross-examination, at Folio 2352, he repeated that he did not believe it would be a good thing for competing lines to be consolidated and have one agent, and then, at Folios 2353-4, he testified as follows, in answer to counsel for defendants:

"Q. In other words, let us assume that the Union Pacific does not own any stock of the Southern Pacific, and that it is entirely separate in its ownership and management from the Southern Pacific, and that it has its own representatives here in the field, we will say, as it had before, and the Southern Pacific has its representatives?

A. Own separate higher traffic officials?

Q. All the way through—separate organizations. And it may be that two men can do the work better than one. So my question is not as to the number of men, but as to whether they represent the two interests separately?

A. Separate organizations from a traffic standpoint at least?

Q. Yes.

A. I think I understand your question. I think we would prefer the separate organization.

Q. Why, Mr. Buchanan?

A. I think a shipper in a case of that kind, where there are two separate and distinct systems, would stand a better chance of getting liberal, reasonable

rate-legislation than they would from the one organization.

Q. Are you keeping in mind in that answer the physical connection and location of the Union Pacific with reference to the Southern Pacific?

A. Yes. That would be perhaps less so with them than with some other systems, but I think even with them my answer would be it would be better that they be separate.

Q. Isn't it true there cannot be any competition between the Union Pacific and Southern Pacific line west of Ogden?

A. Well, now, perhaps you or Mr. Stubbs can answer that better than I.

Q. Well, do you know of any?

A. I should think there was and could be again more competition between the Ogden route and the Southern Pacific direct."

Again at Folios 2356-7:

"Q. What I am trying to develop, Mr. Buchanan, really, is any reason that you may have, not generally as between competing lines, but as between the Union Pacific and the Southern Pacific, considering their relations at Ogden—how a shipper could be any better served by two men representing the two companies separately than by two men representing them jointly.

A. Well, I don't know that the shipper here would be particularly benefited by Mr. Connor representing only one road. But I am not prepared to say that the shipper would not be better off if the Union Pacific and Southern Pacific had separate traffic organizations.

Q. But are you prepared to state in what respect he could be better served by separate traffic organizations?

A. I think he would be better served; he would be less likely to have unreasonable rate legislation, unreasonable advances, unreasonable rules and

> regulations. I think that he would be apt to get a fairer, quicker hearing on a matter of that kind than if they only had one."

Being pressed for a further answer, he testified (Folio 2358):

> "A. Well, I will have to reiterate what I have said. I think where there are strong systems that are separate the shipper stands a better chance—I think it is obvious that he would even with the best intentions on the part of the traffic managers of the larger systems—that he stands a better show of getting a fairer hearing on any question that he will bring up, less chance of an unreasonable rate, or unreasonable rules and regulations."

Mr. Buchanan represents one of the greatest shippers in the United States. If such a shipper as that would be better off with separate representation and active solicitation of business by rival lines, how infinitely more is it to the advantage of the small shipper who has to depend on the railroad agent for all of his information, and whose means do not permit him to maintain a traffic manager? As to such shipper, the more competition the more service he will receive, because through giving this service as an act of competition, the railroads get their business.

Mr Keavy, Commissioner of the Indianapolis Freight Bureau, with long railroad experience, testified to the competition that exists in solicitation and the kind of service that is rendered; that the service takes into account not only the dispatch of traffic, but the facilities for getting information promptly, treatment of questions like claims, supplying cars, particularly in times of congestion.

He further testified that the personality of the general agent or soliciting agent he had known in many instances to be of great potency and influence in securing business. (Folio 2375.)

Mr. McDowell, of the Atlas Engine Works, testified (Folios 2383-4) that no preference was expressed by Mr. Connor in his agency as to the routes since the consolidation; that it was his experience that the personality and ability of the soliciting agent has a great deal to do with securing business. (Folio 2384.)

Mr. Barker, Traffic Manager of Atkins & Co., saw manufacturers at Indianapolis, a large concern, testified that Mr. Connor, in soliciting business, expresses no preference for one route over the other, and makes no endeavor to route the traffic one way or another. (Folio 2388.)

Mr Bean, of Thomas Manufacturing Co., manufacturers of agricultural implements at Springfield, Ohio, testified (Folio 2391) that since the consolidation the representative of Mr. Connor's agency does not express any preference as to routes, and, being asked in what way he regarded the freight solicitors as of value to railroads, he said:

> "A. Well, I think that they are important in the sense that they bring you in direct contact with the railroad. You have that personal contact that is always effective in business transactions. And then they are generally men who are looking out for the interest of their lines, and in that way trying to benefit the shipper all they can, in the way of good service and in many ways they are very useful to both sides; and in fact, we could not get along very well without them.
>
> * * * * *

Q. Are they useful in the way of getting business for the railroads?

A. Decidedly—decidedly.

Q. What is the important element in competition between railroads, to your mind?

A. The rates being equal, I think the first element is service; that is to say, the line that seems to be freer and in position to carry your freight with the best dispatch, particularly when you are in a hurry; they would be more apt to get the business. But all conditions being equal, I think the personnel of the solicitor has considerable to do with it." (Folios 2391-2.)

He further testified that he formerly shipped via New Orleans, but of late has not shipped much of anything that way. During that period, when Mr. Connor represented the Southern Pacific alone, he had a good chance and got the business in many cases, as they aimed to divide their business between all the lines. (Folios 2392-3.)

Mr. Nichols, Traffic Manager for the Long & Allstatter Co., manufacturers of agricultural implements at Hamilton, Ohio, produced the cards of Mr. Connor and Mr. Lister, Traveling Freight Agent, working under Mr. Connor. They are introduced as Complainant's Exhibits 115 and 116. On the face of Exhibit 116 are the names of the Southern Pacific and Union Pacific companies, and on the reverse side is a map which shows in heavy type the Union Pacific, Southern Pacific, and the San Pedro road, and in lighter type a few of their connections, among others the lines leading from El Paso to Kansas, and from Denver southeasterly to Fort Worth. (Folio 2407.) He was also asked his opinion as to the usefulness of freight solicitors to shippers, and testified:

"A. Well, they can assist you in getting your stuff through; furnish you special equipment, quote you rates; things along that line.

* * * * *

Q. And by reason of being useful to shippers they are able to get business for their lines?

A. Yes, sir." (Folio 2408.)

Mr. Blair, of the Nile Tool Works Co., Hamilton, Ohio, testified that Mr. Connor and his assistants, when calling on him and soliciting business, expressed no preference between the two routes. When asked as to the usefulness to railroads of freight solicitors and commercial agencies, he replied:

"A. I believe they are a very useful adjunct to a railroad. They do the railroads a good deal of good in soliciting their business, and they also do the shippers some good, * * * by way of looking after shipments after they are started, tracing them, hurrying them forward to their destination, reporting arrivals."

He further said, assuming that rates were equal, that competition for business depended a good deal on the personality of the solicitor; also the matter of service and equipment. (Folios 2422-3.)

Mr. Gothlin, Railroad Commissioner of Ohio, for nine years General Agent of the Wisconsin Central at Cincinnati, four years of that time representing both the Northern Pacific and the Wisconsin Central jointly, testified as to the great value to the railroad of local representatives like Mr. Connor, by bringing the railroad in direct contact with the shipper, showing them how to route their business, and further said:

"A. Now, in my own experience, it was frequently possible for me to furnish equipment to shippers, and I think that is the experience of a great many of the western agents. They take upon themselves the burden of securing the equipment. * * * At one time the road that I represented had furniture equipment—that is, suitable for bulky freight, such as buggies and furniture. Take the Big Four Railroad, for example; I had an arrangement—and I think many of the other western agents also had—with Mr. Cavanagh, Superintendent of Car Service, to keep a certain number of those cars in Indianapolis, and on my order he would send them to Cincinnati or Columbus or any other place where we wished to load them, and have them there promptly, thus relieving the initial line agent of any bother or worry, and also the shipper, which was considered quite an advantage to the shipper." (Folios 2433-4.)

He further said that that was of assistance in securing business, because if he got the car he got the business. He detailed certain other services that he had performed for shippers, enabling him to get business for his line; for instance, the East Liverpool potteries are located at a noncompetitive point on the Pennsylvania Lines, and they ship all over the west, and they wanted to be in a position to know what the rates were. He and one or two other soliciting agents prepared sheets showing all the western towns of any size in alphabetical order, and the through rates made up by combining the Pennsylvania rates to Chicago or the river, plus the rates beyond, on commodities in less than carload lots, so they would have those rates before them. The shippers considered that quite an advantage and it secured for the agents a good deal of business. As new tariffs came out, the sheets were changed. The National Tobacco Works of Louisville became one of his best

patrons, and he secured other business by being able to secure prompt refund of the revenue tax on tobacco shipped through Canada, through a series of tracings by which he was able to advise them very promptly of the delivery to the passing of the boundary. Through arranging that, he secured their business steadily for years without further solicitation.

By tracing shipments from Middletown, Ohio, and keeping shippers posted promptly, he secured practically all of the competitive business in his territory. (Folios 2434-6.) He also instanced the fact that Mr. Connor rendered him legitimate service at the time he (Gothlin) was Traffic Manager of the National Cash Register Co., by taking up through his superior officer, with the Transcontinental Association, the matter of a change of rates, in consideration of which he gave the business to the Southern Pacific. He said he thought that the location of commercial agencies in the eastern field by transcontinental lines was a valuable method of securing business for those lines, and also of value to the shippers, as it gave them a friend at court. (Folios 2436-7.)

Mr. McGuffey, with the Proctor & Gamble Co., says that some commercial agents are of assistance to shippers:

> "If we are discussing any rate matter, we call in one of the commercial agents, if he is a live man, and talk the matter over with him and make it plain to him, and get him to put it up to his people for us."

He further testified:

> "Q. Now when you were connected with the freight department of the Queen & Crescent, did you learn, or have you since learned, what service, if any, the

soliciting agents performed for small shippers? You have a large organization, I suppose—Proctor & Gamble, but in the case of small shippers, what service can they reasonably and properly perform?

A. I think they would perform a good deal of service for a small shipper. They are supposed to post him as to what the rates are. They could not do that for us. * * * We take care of that ourselves. We have a large traffic department, with tariff files, and we generally post them as to what the rates are.

Q. But in the case of a small shipper, the contrary would be true, wouldn't it?

* * * * * *

A. In the case of the small shipper, his only method of tracing a car is to go to the soliciting agent of the road, unless the general freight office of the road happens to be in the city where he lives." (Folios 2488-9.)

Mr. Shewalter, in charge of the traffic of Mast, Foos & Co., manufacturers of windmills and pumps, at Springfield, Ohio, testified that since the agencies at Cincinnati were consolidated, no preference is expressed between the New Orleans gateway and the Union Pacific. (Folio 2500.)

The same testimony was given by Mr. Cory, in charge of the traffic of James Leffel & Co., manufacturers of water wheels, steam engines and boilers. (Folio 2504.)

Mr. Marshall, Traffic Manager of the Pioneer Pole & Shaft Co., the largest manufacturers of buggy poles and shafts in the United States, at Piqua, Ohio, testified that since the consolidation of the agencies, the soliciting agent expresses no preference between the Sunset Route and the Union Pacific route. (Folio 2508.) He further said that he felt that the more competition there was between lines,

the more activity there would be to give good service, in order to get the business. (Folio 2512.)

Mr. Blum, for a long time Traffic Manager of the Globe-Wernicke Co., Cincinnati, the largest manufacturer of sectional bookcases and cabinets in the world, testified that since the consolidation, the Cincinnati agency has been impartial between the Union Pacific and the New Orleans route. (Folio 2514.)

Mr. Hedges, of the Peruna Co., Columbus, Ohio, testified that the representative of the joint agency is impartial between the two routes in his solicitation. (Folio 2523.)

Mr. Pursel, in charge of traffic of the Armleder Wagon Works, Cincinnati, testified that the representative of the joint agency solicits his business, but expresses no preference between the New Orleans and the Union Pacific route. (Folio 2539.)

The same testimony is given by Mr. Berndt, Traffic Manager of the Andrew Jergens Co., manufacturer of soaps, perfumes, etc., at Cincinnati, (Folio 2542.)

Mr. Coakley, Traffic Manager of the American Steel & Wire Co., at Cleveland, says that in soliciting most business at the present time, the joint agents aimed to get the long haul by Omaha. If they cannot get it that way, they take whatever haul they can get. (Folio 2557.)

Mr. Coakley further testified as to the value of soliciting agents on transcontinental lines, and that he considered them very valuable and of considerable benefit to the com-

pany that he represents, as they furnish him rate advices, keep him posted on contemplated changes in classifications, in which he is interested, and expedite the movement of traffic, and he regards them as of value to the railroads in securing business for the lines they represent. (Folios 2557-8.) That the reason why business moves in greater volume through Omaha and less through the New Orleans gateway at the present time is because the agent tries to move the business that way. (Folio 2566.)

Mr. Boltz, Traffic Manager of a large number of oil refineries, known as the National Petroleum Association, with headquarters at Cleveland, the refineries being located in the states of Pennsylvania, Ohio, New York, Kansas, and the Dominion of Canada, said the joint agent solicits his business but does not express any preference between the New Orleans and Omaha gateways. (Folio 2573.) He further testified, in answer to a question as to the desirability of transcontinental lines seeking business in his territory to the coast, maintaining soliciting offices:

> "A. I should say that it was the wise thing for them to do, for the reason that a line which is represented in a certain city or district is, unquestionably, able to secure a greater volume of business for their line than if they were not so represented.
>
> Q. And if two lines are in competition with each other for business, and one line has a local agent and the other has not, is not the latter line at a disadvantage in securing competitive traffic?
>
> A. I should so consider it, most certainly."

When asked what services were performed for shippers by soliciting agencies, he replied:

"A. Why, it is frequently the case that shippers desire certain business transported with as little delay as possible. In that case the local representative endeavors to trace the cars through, sometimes by wire, but in every instance endeavors to hasten the delivery of the shipment with as little delay as possible. It also occurs at times that when changes in rates are pending, local representatives have knowledge of changes that have become effective, and give the information to the shipper, who avails himself of the opportunity to ship during the time when the rates are most advantageous.

Q. What effect does the performance of these services have upon the ability of the soliciting agents to get business from the shippers?

A. Well, a good live wire would naturally secure a great deal more business than one who did not give attention to the detail of the movement of the business and endeavor to give the shipper all the information he could, concerning changes in rates, and so on." (Folios 2576-7.)

Mr. Boltz also gave testimony with reference to a new rate adjustment made on petroleum by the Transcontinental Traffic Association in April, 1906, mentioning the names of some of the representatives of the different lines who were present, and stated that as he understood it, Mr. Luce represented both the Union Pacific and Southern Pacific lines, although Mr. Munroe was in Chicago at the time, and perhaps represented the Union Pacific. (Folios 2586 et seq.) He further said that Mr. Connor had always assisted him in any way he could in tracing cars and anything of that sort, and then gave the following testimony:

"Q. Then, the only change in the situation, so far as Mr. Connor is concerned, that you have observed, is that formerly he tried to send his business via New Orleans, and now he is indifferent as to whether it goes via New Orleans or Omaha?

A. Yes, sir.

Q. He is no longer competing for coast business, as between the Southern Pacific and Union Pacific?

A. No, sir." (Folio 2591.)

Mr. John F. Ryan, Traffic Manager of the National Supply Co., manufacturing oil and gas well supplies, testified that since the consolidation of the agencies, his business has been solicited by Mr. Choate, of Detroit, and in soliciting business he makes no distinction between the two routes, and there is nobody in the Cleveland district at the present time, since the agencies were consolidated, conducting the competition, which was formerly conducted by Mr. Connor and the other people. (Folio 2607.) In the old days, when competition was active, more traffic moved by New Orleans than at present. (Folio 2608.) On cross-examination he said that this traffic was not moving by New Orleans because it is not solicited, and if that line was now represented by a solicitor working exclusively for that line, more business would move by New Orleans at the expense of the Union Pacific-Ogden line and the Santa Fe. (Folio 2611.)

Mr. E. D. Ryan, Traffic Manager of the Milburn Wagon Co., of Toledo, Ohio, testified that his business is solicited by Mr. Choate, of Detroit, by way of Omaha or Kansas City, but if he learns that shipments are going via El Paso, he tries to get them by New Orleans. (Folio 2614.)

Mr. Kleuter, Traffic Manager of the Gendron Wheel Co., at Toledo, testified that Mr. Choate, of Detroit, solicits his business without discrimination between the two routes. (Folio 2622.)

Mr. Henderson, Traffic Manager of the White Sewing Machine Co. at Cleveland, testified that while they used to send business by New Orleans, none of it now goes by that route, but most of it goes by Omaha, some of it still by El Paso, but in soliciting traffic the joint agency does not discriminate between the Southern Pacific and the Missouri River gateways. (Folios 2638-9.) When asked as to his opinion about the value to railroad companies of local soliciting agencies, he said:

> "A. Why, I think if the line is represented by a local man, there is a better chance of getting business.
>
> Q. What can these local men do in the way of securing business? How do they get it?
>
> A. Oh, they assist in getting equipment, looking after forwarding and making up a report passing points, and such as that.
>
> Q. Is it your experience that the active solicitation of local men does secure business?
>
> A. Yes, sir." (Folio 2640.)

He further testified (Folio 2642) that, while the joint representatives were very active in soliciting business for the consolidated system, that they do not solicit for the Union Pacific as against the Southern Pacific as they did in the old days when they were competing with each other.

Mr. Norvell, Traffic Manager for Park, Davis & Co. of Detroit, the largest manufacturing pharmacists in the country, says his business is solicited by Mr. Choate, and that he does not discriminate as between different parts of the system made up of the two lines. (Folio 2651.)

Mr. Gordon, Traffic Manager of the Anderson Carriage Co., of Detroit, testified that Mr. Choate solicits his busi-

ness, but does not discriminate between the two routes, and that so far as the representative of those lines is concerned, there is now no competition for business at Detroit. (Folio 2655.)

Mr. Evans, Traffic Manager of the Sherwin & Williams Co., manufacturers of paints, varnishes and oil at Cleveland, testified that at the present time he is inclined to think Mr. Connor would like to see the business go through Omaha. (Folio 2664.)

Mr. Hart, Traffic Manager of the Gresselli Chemical Co. of Cleveland, manufacturing chemists, with plants at various cities, says that now Mr. Connor and his assistants, he thinks, prefer to take traffic by way of Omaha, and that he quit routing through New Orleans for no special reason, except that at the time the Southern Pacific was represented separately Mr. Connor solicited for it, and his personality had something to do with getting the business that way, and when Mr. Connor's personality was switched from the Southern Pacific route, at least partially, the traffic went with it, whereas in the old days it went both ways, and was about evenly divided. (Folios 2667-8.) He further testified that he regarded freight solicitors as of considerable importance to their roads in getting business, and they are also of service to the shippers in getting tariff quotations, getting the tariffs themselves, and assisting in helping the freight through when shippers are in a hurry for it.

Mr. Wilkison, in charge of the traffic of Chandler & Price Co., the largest manufacturers of printing presses and printing machinery in the world, says that no distinction

is now made in the solicitation of the business by the joint agency; that the agent is satisfied that if it moves either Union Pacific or Southern Pacific via New Orleans. (Folios 2673-4.) He further says that, in his opinion, free traffic in the hands of the consignor moving out of Cleveland can be influenced as to the direction it will move by the personal solicitation of traffic solicitors; that he believes in local representatives, and that he believes they will secure business for their lines.

Mr. Stewart, Traffic Manager of the Standard Sewing Machine Co. at Cleveland, said Mr. Hild, the representative of the Southern Pacific and Union Pacific system, whose card appears as Complainant's Exhibit 116, Folio 2677, solicits his traffic, but he does not solicit for either the Union Pacific or Southern Pacific one as against the other. He further testified that, in his judgment, the movement of traffic is affected by the solicitation of business; that the solicitors succeed in getting the business, and from the standpoint of the railroad represented, it is valuable to have traffic solicitors in the field. (Folios 2678-9.)

Mr. Peck, Traffic Manager of the Brown Hoisting Machinery Co., manufacturers of ore and coal handling machinery, of Cleveland, says that his business is solicited by the joint agency, but he never knew them to discriminate between the southern line and the Union Pacific line. He regards soliciting agents as useful to railroads in securing traffic; they endeavor to facilitate the movement of traffic, make it quicker; shippers can keep in touch with the movement by calling them up on the telephone quicker than they can by outside offices. Also on rates and tariffs and getting general information that shippers might want through the

local offices, and in consideration of performing those services, he feels like giving them business. (Folio 2701.)

Mr. Wentz, for many years the representative in Chicago of the Rock Island road, testified that competitive traffic is largely secured through the personality of the agents, and the time in which it can be delivered and the prompt adjustment of claims is a consideration. When asked as to the necessity of railroads maintaining commercial agents to compete for traffic in the competitive territory, he replied:

> "A. The road which kept the solicitors on would get the greater portion of the business, all other things being equal. There is no doubt of that."

He further said that agents look after the interests of shippers in a great many ways; sometimes the shippers want a particular tariff, and the solicitors will wire on and get it for them. The solicitor will take an interest in the settlement of their claims, and frequently help to get equipment set for the business. (Folios 2836-7.)

Mr. Evans, of Peoria, Ill., Traffic Manager of the Kingman Plow Co., testified:

> "Q. Does the Southern Pacific solicit that business now?
> A. Not as Southern Pacific business exactly.
> Q. The joint agency?
> A. The joint agency solicit it.
> Q. Which way do they solicit it? This joint agency solicits by the Union Pacific as I understand you.
> A. That is their preference." (Folio 2882.)

At Folio 2883, he further said that they solicit for the long haul represented by the joint agency, that is, the Union Pacific and Southern Pacific together.

Mr. Younge, Traffic Manager of the Wilson Interest, distillers, wholesale grocerymen and packing houses at Peoria, says the joint agency call on him now and solicit business by Kansas City and Omaha gateways. (Folio 2927.)

Mr. Montgomery, Traffic Manager of the International Harvester Co., says that while he cannot say positively, he would say that the joint agency since the amalgamation, has solicited their business generally any way they could get it, but perhaps without any special partiality. (Folio 2957.)

Mr. Bell, Traffic Manager of the Crane Co., of Chicago, states that since the consolidation, Mr. Niemyer has solicited business from Pittsburg, Cincinnati and Chicago, and his attitude is neutral as between the two routes. (Folio 2972.)

Mr. Bell further testified that shippers are influenced by the service they can get, since rates are made uniform over all lines, and that business is undoubtedly influenced by the personality of the man in charge of the traffic. (Folio 2980.)

Mr. Ginz, for a long time Traffic Manager of the South Bend Chilled Plow Co., of South Bend, Indiana, testified that after the amalgamation the joint agency solicited their traffic by way of the Union Pacific and stated to Mr. Ginz that the fast service that he had formerly enjoyed by way of the New Orleans route, had been abandoned, and that

better time would be made over the Union Pacific than over the Southern Pacific. He states that nobody has called on him working for the Southern Pacific route since the amalgamation. (Folio 2986.)

He further made another very significant statement, which is, that the Illinois Central has not actively solicited business to the coast by way of New Orleans for about three years. That is an interesting circumstance in view of the readjustment of the traffic situation that has been going on resulting from the conspiracy complained of. (Folio 2990.)

It appears in Harriman Exhibit 2, Folio 1264, that on August 9, 1906, the Union Pacific Railroad purchased between 29% and 30% of the capital stock of the Illinois Central, which the defendant Kahn stated, (Folio 2039) amounts to practically a dominating interest. While there is no direct evidence of the traffic relations between the principal officers of the Illinois Central and the Union Pacific, still, if not only the Southern Pacific solicitation from certain territory to the coast by way of New Orleans has been withdrawn, but if in addition about three years ago the Illinois Central solicitation was likewise withdrawn, it seems fair to assume that the purchase of this dominating interest, as it was called by Mr. Kahn, may have been effective in increasing the monopoly of the Pacific Coast business from certain territory, endeavored by these defendants to be handed over to the Union Pacific.

Mr. Holderness, in charge of the traffic of the Bain Wagon Co., of Kenosha, Wis., testified that the Illinois Central representative used to solicit his business to the coast by New Orleans; that he now calls on him, but

does not solicit coast business, and the consolidated Union Pacific-Southern Pacific Chicago agency solicits business exclusively by the Ogden gateway at the present time. (Folio 3000.) On cross-examination he repeated that formerly he sent shipments by way of New Orleans to California through the solicitation of the Illinois Central representative; that this was previous to the merger. (Folios 3002-3.)

Mr. Knight, for a long time General Agent of the Union Pacific in Chicago, testified that a general agent is brought in personal contact with manufacturers and shippers of various kinds, men who want to ship and open up new territories, if they can get satisfactory rates established, and that it is and was during his experience, part of the function of a general agent to make recommendations as to changes of rates, and as a rule such recommendations led to readjustments in rates. (Folio 3025.)

He further testified, (Folio 3026):

> "A. Well, those recommendations would usually come up—they would be made a file of, pending a meeting of the association. For instance, if it is a transcontinental proposition, why, the recommendations, together with all the necessary data, would be sent to the traffic manager, and he would put it in his file for the next transcontinental meeting; and there it would be presented to the meeting for action, and if it was a worthy proposition, why of course it carried. Some of those matters, too, were sometimes matters of classification, and then the recommendation and all the files would go to the chairman of the classification committee, for action at the next meeting of the classification committee, which was tri-annually."

He was asked whether he frequently had occasion to make such recommendations, and replied:

> "A. Oh, with the growth of the West, with the new commodities and new manufacturing interests springing up, why, as they appeared, those things were required." (Folio 3026.)

Mr. Dutton, for many years Traffic Manager of Kelly, Maus & Co., wholesale hardware, Chicago, speaking of routing most of his business to the coast by the C. B. & Q. in connection with the D. & R. G., for the reason that the General Agent was a personal friend, said:

> "A. If a certain agent is a personal friend of yours and he can get the goods to destination, you would naturally give him the benefit of it—at least I do. All things being equal, you understand—rates and everything else." (Folio 3109.)

Mr. Barker, Chicago Manager of Jones & Laughlin Steel Co., Pittsburg, testified that after the consolidation of the agencies, a solicitor asking for business gave Mr. Barker to understand that it made no difference what way it was routed, so long as it went over the Southern Pacific line or the Union Pacific. (Folio 3116.)

Mr. Sage, in charge of the traffic of Fairbanks, Morse & Co., Chicago, testified that in his opinion soliciting agents can help a shipper materially, if they are posted on tariffs, rates, time, etc., and all that tends to help get business for their road. They are a help even to large shippers maintaining traffic departments, and are quite valuable to small shippers. When two lines are in a position to compete for business, one of them maintaining a soliciting agent in a

large place like Chicago, and the other having no soliciting agent, the one maintaining the solicitor will get the most business. On cross-examination he emphasized this, testifying as follows:

> "Q. Most all railroads maintain solicitors, don't they, Mr. Sage?
> A. Yes, sir, I think so, so far as I know.
> Q. And always have?
> A. As far as I know, yes, sir.
> Q. You would regard that as pretty good evidence that they serve some useful purpose, wouldn't you?
> A. I surely do, yes, sir." (Folios 3201-2.)

Mr. Stubbs, in his statement before the Board of Arbitration on the Canadian differentials, made a strong statement as to the value of soliciting agents. As we have said, when discussing the Canadian Pacific differentials, there was one year that the American lines paid the Canadian Pacific $500,000 subsidy to induce that company to maintain rates, with the agreement that all revenue actually received on transcontinental business by the Canadian Pacific should be applied in dimunition of the amount so to be paid Mr. Stubbs, in his argument, suggested that during that year the Canadian line sat still and didn't work to get business out of San Francisco. He read in evidence at Folio 3264. what he had said on that subject, as follows:

> "I submit, where would the Union Pacific that makes in connection with the Central Pacific the shortest and most direct line, that is the oldest line to San Francisco—where would that company be to-day if their agencies were to carry out the program indicated for his agencies by Mr. Kerr in that testimony? Would it get any business that was competitive as between themselves and the Santa

Fe or the Missouri Pacific or Burlington or Rio Grande or Rio Grande Western roads? In three months, notwithstanding all its natural advantages, more than 50 per cent of its business would leave its rails; if it would get anything at all that possibly could go over another route."

Mr Stubbs was then asked if anything had occurred since 1898 to change his view of the usefulness of agents in getting competitive business, and to that he answered, "Yes." When asked to explain, he merely stated that it was a pretty strong statement, and probably he would not have made it if he had been in any other position than that of advocate trying to make things as strong as possible. After that explanation, he testified:

"Q. Assuming, Mr. Stubbs, that you were carried away a little by your enthusiasm when you put it as high as 50 per cent, it is your opinion, is it not, that where business is competitive, soliciting agencies are of great value in securing business for the lines that they represent?

A. Yes, sir."

Naturally it was somewhat embarrassing for Mr. Stubbs to be faced with a statement of the character that he had made, in view of the fact that he is the head of the traffic bureau of these various lines, and has consolidated the agencies at practically all points where competition formerly existed. But when the question was put squarely to him as to the great value of soliciting agents in securing competitive business, he testified to their value. (Folios 3264-5.)

Mr. Markham testified, (Folio 3685):

"Q. From your experience, what is your opinion as to the desirability of railroad lines which are

competitive with each other, maintaining soliciting agencies to get traffic?

A. I think it is all-essential.

Q. Assuming that two roads are competitive, and one of them maintains a soliciting agency and the other does not, what, in your opinion, would be the effect on the movement of traffic?

A. The line that did not would be at a disadvantage."

Mr. West, Assistant General Freight Agent of the M. K. & T. at St. Louis, testified, (Folio 3807), that since the consolidation of the Union Pacific and Southern Pacific agencies at St. Louis, and at other points, he had not observed any preference shown by the joint agency as to the direction in which transcontinental traffic should move, whether south or north, so long as they got a haul out of it, but that they have competed against outside lines.

Mr. Swingley, for a long time the Traffic Manager of the St. Louis Car Co., testified at Folios 3825-26, that he was a personal friend of the former General Agent of the Union Pacific at St. Louis, and that that friendship influenced him to some extent in giving the Union Pacific the business. He then testified:

"Q. What is your opinion from your experience in the traffic business, as to whether business is influenced by the personality of the general agents or soliciting agents?

A. It has been my experience that personality has a great influence, provided conditions are any way equal.

Q. If they are anywhere nearly equal, or substantially equal?

A. Yes, sir.

Q. It is your opinion, then, that soliciting agents are of value in securing business for their companies?

A. It is; that is my opinion."

Mr. Hanson, Traffic Manager of the National Enameling & Stamping Co., after having testified that his coast business was formerly solicited by the Illinois Central via New Orleans, testified that at present they are not soliciting anything that way, and do not call on him any more. (Folios 3835-6.) This evidence is cumulative to that given by Mr. Ginz

He further testified that the joint agent of the Southern Pacific and Union Pacific now solicits coast business by their joint line, namely, through Omaha or Kansas City, but is not particular what route he gets it by. (Folios 3837-8.)

Mr. Feickert, Traffic Manager of the Lemp Brewing Co., said that the joint agency in St. Louis expressed no preference as to whether the business should go via Omaha or El Paso. (Folio 3876.)

Mr. McCarthy, Traffic Manager of Salt Lake Hardware Co. said their business is now solicited from the Atlantic seaboard by the Morgan line to Galveston, Southern Pacific lines to Fort Worth, and thence by connection to Denver, and by the Union Pacific and from interior points through Kansas City or Omaha by the Union Pacific (Folio 3910.) On cross-examination an endeavor was made to develop that this joint agency is soliciting for the long haul and the most revenue. Mr. McCarthy testified that that was true, but they treated both systems as one, and the long haul from the Atlantic seaboard was by way of the

Gulf and Fort Worth, whereas if he was representing only the Union Pacific, the long haul that the solicitor would work for would be from the Missouri River. (Folio 3927.)

Mr. Stubbs when called by the defendant, after testifying that transcontinental rates are made by the Association, each line having a vote, said: (Folios 6643-4.)

> "Q. Now, the fact that the rates are determined this way in conference, and are uniform, outside of whatever friction may exist in the meetings, fixing the rates, reduces the matter of competition very largely, does it not, to a question of service and solicitation—seeking to get the business by giving good service, by settling claims promptly, and doing other things?
>
> * * * * * *
>
> A. Well, they certainly are elements, and important elements; but whether there were all or not I wouldn't want to say."

We have already in connection with the discussion of Colorado and Utah common points business called attention to Mr. Munroe's testimony (Folio 6809 et seq.), as to the power of competitive railroad organizations in controlling and securing business. Mr. Hannaford testified, (Folio 8042): that the Northern Pacific Railway Company maintained general agents and commercial agents at large points like Chicago, Pittsburg, New York, Philadelphia, Boston, Buffalo, and that their function was to represent the Northern Pacific Railway and get all the business they can that the road is able to carry, and route it over that line. He then testified:

"Q. Now, do your agents meet any competition at such places and in the same line with agents of the Southern Pacific and the Union Pacific?

A. Yes, sir.

Q. And at some places you meet an agent who represents both the Southern Pacific and the Union Pacific, don't you?

A. Recently.

* * * * * *

Q. Now, those commercial agents that are kept at these different points throughout the country are a great assistance, are they not, to the lines they represent in securing the routing of traffic over those lines?

A. Why, we feel so, yes, sir.

Q. And that is the reason you keep them there?

A. Yes, sir."

At Folio 8043 he says that the winter tourist business is an active competitive business solicited by the Southern Pacific line and the northern lines.

AFTER THE PURCHASE OF THE CONTROL OF THE SOUTHERN PACIFIC BY THE UNION PACIFIC, NOT ONLY WERE AGENCIES CONSOLIDATED AND THE COMPETITIVE EFFORTS OF SOLICITING AGENCIES WITHDRAWN, BUT THE AGENTS OF THE TWO SYSTEMS WERE INSTRUCTED TO HANDLE TRAFFIC IN A WAY TO PRODUCE THE MOST REVENUE FOR THE CONSOLIDATED SYSTEM.

We have already, in connection with the discussion of the attitude of the consolidated agencies, called attention to some of the testimony indicating that the two systems were to be treated as one, but in addition to the new attitude assumed by the solicitors, the testimony shows that the common traffic officials at once made arrangements and issued orders to unify the two previously competing organizations, for the purpose of routing the traffic so as to produce the most revenue for the consolidated lines.

Mr. McCusker testified that some time after Mr. Stubbs took charge of the traffic of all the lines the agents at Portland were called in to a meeting by Mr. Campbell, General Freight Agent of the O. R. & N. It will be recalled that Mr. McCusker was a Southern Pacific official, but he says of this meeting:

> "We were told to solicit Atlantic seaboard business via Sunset; that is, certain business where the local to New York would not be too great; and other business west of there, while I was not told to actively solicit that, at the same time I was told to influence it via the Union Pacific."

He said the same instructions were given to the O. R. & N. representatives at that time. He further said that the reason was that they wanted the most revenue for the

least service. They did not want to perform the long service for the same revenue that they could get for the short service, and they wanted the freight from the territory that would give them the best revenue for the system.

The Ogden gateway was then closed to business for Portland via Sacramento, and they arbitrarily diverted freight by the Short Line. The divisions were changed in some way, and the instructions were not to solicit any business via Ogden; that is, via Sacramento. Anything west of the Atlantic seaboard was to come Union Pacific, Short Line and O. R. & N. and not by Sacramento. (Folios 722-724.)

The above testimony was given by Mr. McCusker in the winter of 1907, before the Interstate Commerce Commission. He was recalled at the time the testimony was taken in this case in Portland, and at Folios 4493-4 was examined again with reference to this matter, and among other things said:

> "A. I mean that the O. R. & N. people—Mr. Morse had his instructions to solicit New York business or Atlantic seaboard business via Sunset while he was an O. R. & N. man and I was still a Southern Pacific man, and I had instructions to influence any other business west of there by Union Pacific."

On cross-examination he said that the O. R. & N. line between San Francisco and Portland had their agents and were constantly soliciting for the boat, while he continued actively soliciting for the railroad; that each was expected to look after his own business, but in addition to that there were opposition boat lines, and if he heard of business that was going to move by boat that he could not get by rail, then he was to notify the O. R. & N. boat line of the business.

Mr. McCusker further testified at Folio 4504, that after receiving these instructions he abandoned his endeavor to work business from Cincinnati to Portland by the Sunset Route, and that hops moving to Cincinnati were not longer solicited by the Sunset, but went Union Pacific.

The fact that this change did not take place immediately after Mr. Stubbs' appointment as Traffic Director July 1st, 1901, but was delayed for some time, was because of his illness. Mr. Stubbs testified at Folio 543, that his office did not become organized and effective until perhaps late in 1902, because of his illness, as he was very ill. In connection with Mr. McBride's testimony at Folio 829, as we have before stated, will be found the circular letter sent out by the General Freight Agent of the Southern Pacific Oregon lines, under date of September 1, 1902, closing the Sacramento-Ogden route, and directing that agents will not accept for shipment via Sacramento, any business when routed via Ogden east in connection with the Union Pacific or Rio Grande roads.

Mr. Jenkins, who was with the O. R. & N. up to about 1904, when asked what instructions or directions were given after the merger, as to the solicitation of traffic, said:

> "A. Well, the impression we gave was that it was desirable that Atlantic seaboard business should move by Sunset Route if possible. If not, handle it by Union Pacific."

As to shipments originating west of the Atlantic seaboard, he said they were to move by the Union Pacific if they could get them that way. Mr. Jenkins came off the street and went into the office, and Mr. McCusker was to solicit for both lines. (Folio 824.)

Mr. Miller, at present General Freight Agent of the O. R & N. and of the Southern Pacific lines in Oregon, said he was a party to the negotiations that led to the closing of the Sacramento route, but he did not know with whom Mr. Coman, who issued the circular, conducted them. (Folio 843.) The arrangement was that business from Ashland north, should move to and from the east via Portland; that is, over the Southern Pacific, the O. R. & N. Short Line and Union Pacific. We have heretofore referred to this testimony more in detail in connection with the discussion of another phase of the case.

Mr. Kelly, a lumberman connected with the Booth, Kelly Lumber Co., operating four mills along the Southern Pacific, from 120 to 145 miles south of Portland, and shipping all over the United States except a small part of New England and the South, at Folio 763 testified that previous to 1901, everything that they shipped went south via Sacramento and Ogden. Now it all goes north via Portland and Ogden on account of the rates being withdrawn and shipments all diverted by Portland. (Folio 766.) All their shipments to Utah and Colorado points were thus diverted, amounting to about ten millions of feet a year. (Folio 768.) The change in rates and the movement of traffic has given them new territory and taken away some that they had. He prefers to sell at San Francisco and California, but the traffic is now forced another way, although the best of lumber going to California is two dollars a thousand higher than lumber going east. (Folios 768-9.) Prior to 1901 probably more than 80 per cent was sold in California and Arizona. (Folio 770.) He further lost territory into which he used to ship between Sacramento and Ogden, because of the raising of his rates across Ne-

vada. (Folio 776.) California rates were about to be raised again at the time he testified two years ago, by an advance from $3.10 to $5.00 a ton. Thus by manipulating the rates and diverting the shipments, this large manufacturer was compelled to find a new market, establish new connections, and give up dealing with the people with whom he had formerly dealt.

Mr. Markham, who was for fifteen years ending in 1903, in the traffic department of the Illinois Central, was asked whether there was any difference in the westbound movement of transcontinental traffic originating at points north of the Ohio River in Ohio, Indiana and Illinois, as between the Ogden Route and the New Orleans Route after the amalgamation of the control of the Union Pacific and Southern Pacific, and testified:

> "A. The Illinois Central tried to move that by the New Orleans route, but it oftentimes found that it was desired to route it by the Ogden route. Of course, in working with the Southern Pacific in such cases, if the Southern Pacific controlled it, it would move it one route or the other, according as it felt would pay the most money, I suppose.
>
> Q. Did any facts come to your knowledge indicating a disposition on the part of the joint agency of the Southern Pacific and the Union Pacific to divide that traffic on geographical lines?
>
> A. Yes, sir, there did.
>
> Q. Where was the line?
>
> A. Our soliciting men told us, as I recollect it now, a line drawn northeast from Cairo to some point on Lake Erie. All south of that line would go by New Orleans and all north of that line by the Ogden route. * * * After the joint control." (Folios 3704-5.)

Mr. Throckmorton was asked whether after the Union Pacific acquired its interest in the Southern Pacific, any instructions were given him as to working for any other route than the Sunset Route after that time, and replied that he believed there were some general rate divisions shown showing the amount that accrued to the lines west of Omaha and the lines west of New Orleans, and as he remembered, they were practically the same; that is, that the Union Pacific and Southern Pacific together received about the same revenue that the Southern Pacific did from New Orleans. (Folio 1470.)

Mr. Sweek testified that he was present at the meeting of the soliciting agents of the Southern Pacific and O. R. & N., called by Mr. Campbell and mentioned by Mr. McCusker in his testimony, and he names the various individuals present at Folios 4462 to 4464. The list seems to include most of the Southern Pacific, O. R. & N. and Union Pacific representatives in Portland territory, as well as Mr. Wilde, Chief Clerk of the General Agent of the O. R. & N. in San Francisco. He said Mr. Campbell called these gentlemen together to give instructions in regard to soliciting business. He was asked to give the substance of these instructions, and replied:

> "A. The substance was that we were to work friendly with the Southern Pacific representatives; to work for—in fact, as nearly as I can express it, the whole system then, the Southern Pacific and Union Pacific and Oregon Short Line and O. R. & N. were considered a system, and the idea in working business was to work for the greatest revenue for the system—for that system of roads."

He further said that Atlantic seaboard business was to go by the Sunset Route as far as possible, without antago-

nizing anybody, and business west of Pittsburg and Buffalo north of the Ohio River was to move by the Union Pacific via Omaha.

He further said that Mr. Campbell had at that time a letter from Mr. Stubbs the Traffic Director; he, Sweek, had seen this letter, and it contained in substance the instructions which were given to which he testified. He was then asked:

> "Q. After that time, when those instructions were given, what was the situation in Portland as to competition continuing between the O. R. & N. and the Southern Pacific?
>
> A. Well, we were not working against each other; we were working friendly with each other. We were working—
>
> Q. According to instructions?
>
> A. Yes, certainly, we followed instructions."

He said they continued to do so until he left the service of the company in 1905. (Folios 4465-6.)

Mr. Wilde testified that he was present at the meeting of the commercial agents called by Mr. Campbell, as the representative of Mr. Schumacher, the General Agent of the O. R. & N. and Union Pacific at San Francisco. Wilde was his chief clerk. When asked to state as nearly as he could recall, what Mr. Campbell said at the time, he replied:

> "A. The discussion in a general way was with regard to closer relations between the Union Pacific and Southern Pacific. * * * We were instructed to work with the Southern Pacific more closely and harmoniously than we had done in the past.

Q. You hadn't been over harmonious in the past, had you?

A. Not particularly so among the solicitors." (Folio 4559.)

He further said that business from the Atlantic seaboard zone was to move Sunset, so far as practicable, and all the business was to move Sunset or Union Pacific as seemed to be most advantageous to the system, taken as a whole; that some seaboard business had to be worked Union Pacific, because it might be controlled to some extent by the Trunk Line connections, and it would not be policy to work against them. And again, that if it was more profitable to move business through a certain territory by the Union Pacific, they were supposed to use their efforts first in that direction. If the Southern Pacific would earn more money they were not supposed to make very strenuous efforts to get it; and if the Sunset Route was after business that could be moved by that route, the Union Pacific officials were supposed to keep their hands off and let them have it if they could get it. (Folios 4559-62.)

Mr. Crichton produced a letter, Complainant's Exhibit 161, from Mr. Markham, General Freight & Passenger Agent of the Southern Pacific at Portland, under date of August 13, 1901, cancelling the arrangements between the Southern Pacific and the Columbia River & Puget Sound Navigation Co. for interchange of business originating at or destined to Columbia River points reached by the steamship line. (Folio 4613.) This arrangement had been in force since 1894, the steamship line competing with the O. R. & N. boats.

Mr. Toll, connected with the Southern Pacific for a long time in different capacities, in 1901 handling the correspondence regarding the solicitation of freight, under Mr. Sproule, Freight Traffic Manager, testified that after the amalgamation of the Southern Pacific and Union Pacific, he prepared a statement showing the earnings of the lines west of New Orleans versus west of Omaha, from what was known as the Central Freight Association territory, which took in the lines practically west of Pittsburg and east of Chicago and St. Louis. This was prepared under the direction of Mr. Sproule, and sent to the different soliciting agents. The purpose of it was to show by which gateway the greatest revenue would accrue to the Harriman interests taken as a whole, and the Union Pacific and Southern Pacific were taken as a unit. This table was sent to the soliciting force, both on the coast and in the east, and instructions were issued in connection with that sheet, to the representatives, to endeavor to secure the traffic via the route that would afford the greatest revenue to the Harriman interests. (Folios 4850-51.) He was then asked:

> "Q. Now, how did those figures actually work out, in securing this result of the highest revenue for the Harriman lines? How about northern Ohio and Chicago, Indianapolis, St. Louis and such towns?
>
> * * * * * *
>
> A. My best recollection is that from the Ohio River points, Cincinnati and Louisville proper, the greater revenue was afforded by the New Orleans gateway, and north of the Ohio River there was greater revenue via Omaha." (Folios 4852-3.)

On cross-examination, he testified concerning the route taken by the bulk of the business previous to the amalgamation, and was then asked:

> "Q. The conditions, then, as to the movement of that freight north and south of the Ohio River are substantially unchanged, were they not, prior and subsequent to 1901?
>
> A. With the exception that the New Orleans gateway did handle a portion of the traffic from points north of the Ohio River." (Folio 4859.)

On re-direct examination, he testified:

> "Q. Did you mean to testify in answer to Mr. Dunne that there was no difference in the movement of traffic by reason of the elimination of this competition?
>
> A. Well, as I explained to him, I thought there was a slight difference in the freight from Central Freight Association territory, and a larger portion now comes through the Omaha gateway, whereas it was actively solicited before through the New Orleans gateway."

He defined the Central Freight Association territory as lying east of Chicago and East St. Louis, and west of Buffalo and Pittsburg, and north of the Ohio River. (Folios 4860-61.)

Mr. Clifford, General Agent of the Union Pacific in San Francisco for five years beginning in 1901, stated that he had had in his office a copy of the division rate sheet showing the revenue accruing west of Omaha and New Orleans, with instructions that business be solicited through the gateways giving the Harriman lines the most revenue. (Folio 4905.)

Mr. Prentice, for many years District Freight & Passenger Agent of the Southern Pacific at San Francisco, testified that Mr. Sproule called the traffic soliciting agents together in San Francisco after the merger of the Union Pacific and Southern Pacific, and gave certain instructions as to the method in which business should be solicited, calling in Mr. Gray from Salt Lake, and others, about fourteen in number. The instructions he gave them were very general, but he called attention to the fact that Mr. Harriman had purchased an interest in the Southern Pacific Co., and mentioned the fact that the Union Pacific had agents located in all the principal cities of California, as well as eastern agents, and left the impression on Mr. Prentice that he was rather to refer these matters to their representatives in San Francisco; and in explanation of this reference of matters to the Union Pacific agents, said that in soliciting business at San Francisco for the Southern Pacific Co., he left the routing very largely blank, and put the Union Pacific agent or representative on to the fact that the person had freight to ship. He then testified:

> "Q. At this meeting which Mr. Sproule called, in which he referred to the fact that Mr. Harriman had acquired an interest in the Southern Pacific, was anything said about the territory in which business might originate which you were to call to the attention of the Union Pacific agencies, as you have said?
>
> A. No, sir, because all the officials, those who were at the meeting, were familiar with that matter, and in my opinion it was not necessary for Mr. Sproule to call their attention to that. They were familiar with that work." (Folios 5034-37.)

The effect of amalgamating the agencies and issuing the instructions which were sent to the solicitors made every

Southern Pacific agent, in fact a Union Pacific agent, and in addition to eliminating the competition between those systems tended to monopolize in the hands of the Union Pacific a large part of the business that had formerly been competed for on even terms by the Union Pacific and the Rio Grande and its connections.

PREVIOUS TO THE ACQUISITION OF THE CONTROL OF THE SOUTHERN PACIFIC BY THE UNION PACIFIC, AS TO SUCH BUSINESS AS THE SOUTHERN PACIFIC COULD NOT GET BY ITS OWN ROUTE TO THE EAST BY NEW ORLEANS, AND WHICH HAD TO MOVE BY OGDEN, THERE WAS AN ACTIVE COMPETITION KEPT UP BETWEEN THE UNION PACIFIC AND THE RIO GRANDE, BUT THIS COMPETITION ON THE PART OF THE RIO GRANDE WAS SUBSTANTIALLY DESTROYED THROUGH THE JOINT EFFORTS OF THE UNION PACIFIC AND SOUTHERN PACIFIC AGENCIES.

Mr. Jeffery, the President of the Denver & Rio Grande, after stating that he remembered the fact of the purchase of the Southern Pacific stock by the Union Pacific and the changes made in the organization of the companies in a general way, was asked if he knew what effect, if any, did that amalgamation of authority have upon the Denver & Rio Grande, and answered:

> "A. It gradually eliminated the free interchange that there was between the Southern Pacific and the Denver & Rio Grande system at Ogden, and at Salt Lake City to an extent.
>
> Q. In what way was that elimination brought about?
>
> A. Why, the common control of the Union Pacific, Southern Pacific, and Oregon Short Line, working for the common interest of the properties named, would inevitably reduce the interchange with the Denver & Rio Grande system, a competing line from Denver to Salt Lake City and Ogden, and competing via its eastern connections from

Missouri River points and Chicago and St. Louis, and so on.

Q. What difficulty, if any, did the Denver & Rio Grande find in securing eastbound business by reason of that change?

A. The eastbound business was gradually diverted from the Denver & Rio Grande." (Folios 1831-2.)

He further testified that for a great many years his company had maintained commercial agencies at San Francisco, Los Angeles, and Portland, to solicit and route business via the Rio Grande system and its eastern connections, and the consolidation has stimulated them to even greater efforts than before; nevertheless, the eastbound tonnage delivered by the Southern Pacific is less than it was before the Union Pacific took control of the Southern Pacific, although the business from the coast in general is much greater. He further testified that his road formerly did considerable business in and out of Portland and tributary territory; that it was a diversified traffic—lumber in very considerable quantities, some sheep, cattle, wool, fruits, hops, some Oriental traffic, and at one time they got Oriental traffic by way of San Francisco, but now share in it very slightly.

The Oregon Short Line does not maintain divisions except to a very limited extent; most of them have been withdrawn, while prior to 1901, before the merger, Ogden was a free and unrestricted gateway. (Folios 1832-4.)

On cross-examination, he was asked a question by defendants' counsel, as to whether in effect the difference did not lie in the fact that prior to 1901 the Southern Pacific as between the Rio Grande and the Union Pacific was impartial, and since 1901 it has preferred the Union Pacific with unrouted traffic. He then testified:

"Q. Such business as your agents on the Pacific coast or elsewhere can have routed over the Southern Pacific and your line, the Southern Pacific as a rule respects that routing, doesn't it?

A. No, as a rule they don't.

* * * * * *

Q. Are you sure about that, Mr. Jeffery?

A. Yes, I have had a good many reports on that subject.

* * * * * *

Q. Now, what you really meant by your other answer was that the Southern Pacific agents would really work against the agents of your system in favor of the Union Pacific; is that true?

A. Yes, very actively.

Q. In other words, the Southern Pacific and Union Pacific would work together?

A. Yes."

He further testified that the Western Pacific Railroad is being built because the construction was made necessary by the changed attitude of the Southern Pacific toward the Rio Grande, which he attributes to the control of the Southern Pacific by the Union Pacific. (Folios 1835-7.)

On re-direct examination Mr. Jeffery said that the Sacramento gateway from Portland having been taken out, whatever traffic his agent is able to get at Portland must come over the Short Line, and that most of the divisions have been taken out with the Short Line. He then gave the following testimony:

"Q. Well, then, if the competition of the Southern Pacific line around by Sacramento, with the Oregon Short Line, has been removed, and if your divisions then with the Short Line have been taken out, how can you get any business out of Portland?

A. We don't get much.

Q. They wiped you off the map, then, as far as Portland is concerned, practically?

A. Oh, we come up smiling. We are still on the map, but we don't— * * * do much business." (Folios 1847-8.)

And again, he testified:

"Q. Now, in addition then, to practically taking away your business in Oregon, by reason of the Southern Pacific agents in California working for the Union Pacific, your ability to compete with the Union Pacific has been diminished?

A. Very greatly." **(Folio 1850.)**

Mr. McCusker, testified that previous to the merger on shipments through Sacramento and Ogden, he was under no instructions to favor one line as against the other. So long as he got the haul he worked with all lines. That was done with the consent of his superiors. (Folio 719.)

Mr. Lochman, a large hop shipper of Salem, testified before the Interstate Commerce Commission that he formerly shipped a great deal by the Rio Grande lines and the connecting lines east; that since the merger he has made efforts to route cars directly from Salem by the Rio Grande *without success, as the agent in Salem notified all parties that in order to ship by the Rio Grande lines, it would be necessary to secure Rio Grande Cars, and in their absence traffic had to go either Union Pacific or Southern Pacific.* (Folios 738-9.)

Mr. Kelly, the lumberman, testified that railroad ties, the lowest grade of forest product except mining timber, and which can be transported in any kind of a car, while

long timber requires special cars and which is easier to handle, by a rule that was put in by the Southern Pacific, takes a rate of $5.00 a ton to San Francisco or Bay Point, while a piece double that length or any other length of common timber would be carried at $3.10 a ton. The effect of this was that his company could not make deliveries of any ties in San Francisco or in territory where the Western Pacific was trying to buy ties. (Folios 765-766.)

Mr. Kelly further testified that prior to 1901, when he was routing south to Colorado by the Southern Pacific around by Sacramento, lumber moved from Ogden over the D. & R. G. and occasionally a car by the Midland; and the Denver business now goes by the Union Pacific; that in former years they sold a good deal of material to the Denver & Rio Grande, and it is the practice to always try to give traffic to the various roads and get some of their purchasing agent's business in that way, but they cannot sell to the Rio Grande any longer because of the fact that they cannot give them any traffic. (Folio 777.)

Mr. Kelly further testified:

> "Q. Mr. Cotton asked you whether you had lost any business by reason of the rate adjustments; do you know of any that you have lost other than the traffic in ties to the Gould people aside from your California and Arizona business and Sacramento points east?
>
> A. No, only this Rio Grande business; we used to have lots of that; we had both for the Rio Grande Western and the Denver & Rio Grande; but of late years we haven't had that." (Folio 779.)

He then testified further with reference to the rate put in on ties, saying that the Western Pacific wanted to buy ties delivered at Stockton, which is practically a Bay point.

but he cannot get in there on account of their raising the classification of ties. He said:

> "A. The tie is just as cheap a commodity as goes, and usually moves just the same as other lumber, and other roads shipping out on eastern shipments don't make any distinction between plain lumber and rough lumber. It goes so much a ton anyhow."

He further said that that distinction between ties and other timber is not made in shipping from Portland east over the Short Line, but only from Oregon down to California; that he had sold the Western Pacific a lot of ties, supposing that a tie was rough green common lumber, and shipped a great many of them and "got stuck," as he expressed it, for $2,200 on them. (Folios 779-81.)

The treatment of the Rio Grande is also illustrated by the performances of Mr. Meyer, Car Service Agent of the Southern Pacific and O. R. & N. at Portland. It was apparently made so hot for him that he took back his action gradually. (See Folios 800 to 804.) As will be seen, he first issued a circular to agents, dispatchers and conductors, that until further notice they should not permit any cars to load with D. & R. G., R. G. W. or Western Pacific material shipments or *commercial lading*, except cars belonging to those lines, or that route that way. A few days later he amended this by permitting commercial business to be loaded by the Rio Grande the same as before. On August 15th he modified the circular again, so that the prohibition should apply only to O. R. & N., O. S. L., U. P. and S. P., and other cars belonging to the Harriman lines, which he directed must not be used on shipments of R. G.

W. and R. G. and Western Pacific Ry. Co. material. On the 29th of August he took back the whole of the first circular. It is interesting to read the excuses and explanations made by Mr. Meyer for this proceeding.

Mr. McBride, General Agent of the D. & R. G. at Portland, testified (Folio 827) that in the year 1900 his line secured in round numbers 27,000 bales of hops, or the equivalent of 320 carloads from the Willamette Valley, of which about 280 cars went by Sacramento and Ogden, and about 40 cars came by Portland, the O. R. & N. and Short Line. In the year 1902, one year after the so-called consolidation, he secured less than 30 carloads of hops from the same territory, all of them moving O. R. & N. and Oregon Short Line.

By this will be seen the effect that the Union Pacific control has on business formerly moved by the Southern Pacific out of this territory.

Mr. McBride further testified that traffic moving to the east from Ashland, which is 340 miles south of Portland, and all intermediate points, is moved by way of Portland, O. R. & N. and O. S. L. (Folios 827-8.) At Folio 833 he told of the efforts that were made to get this circular of Mr. Meyer's rescinded.

Mr. McBride further testified that the agents of the Southern Pacific in the Willamette Valley look upon the Rio Grande as a competitor, and that these local station agents are the persons to whom the shippers have to apply for cars. (Folio 838.)

Mr. Jones, Freight Traffic Manager of the Southern Pacific, showed the appreciation that a Southern Pacific education gives a man of the duties of a railway company to the public. His attention was called to this performance with

reference to railroad ties sold by Mr. Kelly, and he was asked if he could explain the reason why they should take a higher rates that the same kind of lumber which was 16 feet long instead of 8 feet long, and he said that it would depend upon the conditions and circumstances surrounding it. When asked what circumstances, he replied:

> "A. Well, there might be conditions and circumstances that would control the movement of ties. For instance, a road might want the ties for its own use. * * *
>
> Q. That is, the railroad might make that kind of a rate so as to prevent some other railroad getting ties from a particular region?
>
> A. No, sir, it does not prevent them, because there is a rate on them.
>
> Q. It makes it more expensive?
>
> A. Yes, it makes it more expensive."

When asked if he thought it was a fair way for a public service corporation to deal with a manufacturer along its line, because they might want the ties themselves, he replied:

> "A. I think it is a fair thing for anybody to take care of himself first." (Folios 1022-23.)

Mr. Shotwell testified in the winter of 1907, before the Interstate Commerce Commission at San Francisco, that he had been for fourteen years the representative of the D. & R. G. at San Francisco; that his line was doing less than 50% of the business then that it was in 1901, for the reason that the Southern Pacific devoted their efforts to securing the business by the Union Pacific; that before 1901 the attitude of the agents of the Southern Pacific toward his company and the Union Pacific, was neutral; that the change in the attitude of the agents of the South-

ern Pacific was gradually becoming more noticeable up to the time of his giving testimony. (Folios 975-6.)

Mr. Hanley, living at Burns, Oregon, 150 miles from a railroad, who has been for thirty years in the cattle business in that country, testified that they have to drive their cattle either to Ontario on the Oregon Short Line, or to Winnemucca, Nevada, on the Southern Pacific. It is 250 miles to Winnemucca; 150 miles to Ontario. He was formerly able to ship cattle from Ontario over the Short Line, and thence over the Rio Grande into Colorado, but the Ogden gateway was closed, so far as the Rio Grande was concerned, three or four years ago. (Folio 4655.) He then testified further:

> "Q. Previous to that time did you have a market for any of your cattle along the line of the Rio Grande south of Salt Lake?
>
> A. Yes; we sold a good many cattle in Colorado. The fact of it is some years ago we probably sold the biggest part of our cattle, especially cow cattle. The Colorado ranges bought a good many cow cattle—cows and calves.
>
> Q. Why was Colorado a better market for cows than the region further north, along the Union Pacific?
>
> A. The Northern country is a special steer country. The further north you go the less success they make of breeding, and the bigger success they make of making prime cattle, good enough to go to the best markets in the country. * * *
>
> Q. What effect on your business did the closing of the Ogden gateway to the Rio Grande have?
>
> A. Well, of course it had the effect of cutting us out of that much territory, and of course we couldn't ship anything into that country. * * *

Q. Did you have regular points to which you shipped in Colorado?

A. Why, not specially so, but in around Rifle and Grand Junction, along in about that part."

(It will be remembered that that is a part of Colorado not reached by any line except the Rio Grande.)

"Q. What was the extent of your shipments of cows down there previous to the time that you were put out of that business?

A. That would be pretty hard to testify to, as to any number, without going a little bit into our records. Some years we would ship a great many cattle down that way. Mr. Parsons has taken a good many steer cattle there himself. He bought from Oregon for a good many years, and supplied his own ranches, and he handled mainly steers, and I suppose some years he had as many as 10,000 cattle go down in Colorado, and from that up.

Q. And that is a business that is now closed to you?

A. No, we couldn't ship anything into Colorado by train now.

Q. What effect did that have on your business in dealing in cows?

A. Well, of course that cut our cow market to a considerable extent."

Mr. Hanley had previously stated that his Ontario shipments in association with Mr. Parsons, who was his partner, ran from 10,000 to 25,000, and sometimes 30,000, cattle a year. (Folios 4655-58.)

It is a pretty serious affair to absolutely deprive a man conducting a business of such an extent of his market. That is a direct result of the consolidation of the Short Line and the Southern Pacific. No one will suggest for a moment that if the two lines had not consolidated the

interchange of business at fair rates between the Denver & Rio Grande and these two lines, on either of which he might have shipped under competitive conditions, would not have continued.

On cross-examination it is attempted to be shown that he might ship into these Colorado points by paying the combined local rates, but he testified that the combination of locals would be so great that he could not afford to ship. (Folio 4682.)

Of course, the only reason that can be advanced for destroying this business of Mr. Hanley is to force the movement of cattle east over the Union Pacific to the packing houses along the Missouri River or on the ranges in Wyoming, which, as he has said, is not a good market for the type of cattle that he formerly sold in Colorado.

THE TRAFFIC AFFECTED BY THE PURCHASE OF THE CONTROL OF THE SOUTHERN PACIFIC BY THE UNION PACIFIC IS ENORMOUS IN AMOUNT.

The gross *freight* revenue of the Union Pacific and Southern Pacific systems for the year ending June 30, 1901, was $81,640,068.80. The gross *freight* revenue of the systems for the year ending June 30, 1907, was $132,537,293.37. Thus the revenue for the earlier year was, in round figures, 61½% of the revenue for the latter year. (Complainant's Exhibit 214 p. 4972 Vol. 11.) In order to show the extent of the transcontinental business of these two systems, certain statistics were prepared and introduced as Complainant's Exhibits 119 and 120, printed opposite page 1872, Volume 4. Defendant also introduced certain statistics upon exhibits which are hereinafter referred to in detail. These latter covered some items of transcontinental business, but included also competitive business other than transcontinental, such as, among others, the local business between San Francisco and Portland, San Francisco and the Willamette Valley, Portland and Utah common points, and Atlantic seaboard and Colorado and Utah common points. Owing to the destruction of Southern Pacific records in the San Francisco fire, and of certain of the Union Pacific records in a fire in the offices of that company at Omaha, it was impossible to make up complete statistics for transcontinental business during the year ending June 30, 1901. By agreement between the parties the figures were prepared for October, 1906, and April, 1907, two fairly representative months. These figures include the whole of the transcontinental freight traffic by both roads, and the rail proportion of Oriental traffic, but do not include the revenue to the ships

upon the Pacific Ocean. Treating the two months in question as representative and multiplying their totals as shown upon Exhibits 119 and 120 by six to arrive at a year's revenue, we have a total of $26,808,092.58, as the total freight revenue on such transcontinental business for the year ending June 30, 1907. Applying the same percentage to this as to the total earnings of the two systems as shown by their annual reports, to-wit, 61½%, we have as the result, total freight earnings on transcontinental business on both systems for the year ending June 30, 1901, about $16,486,976.93.

The defendants introduced in evidence certain statistics partly obtained from connecting roads, partly estimated, and in some cases, in the light of other testimony in the case, clearly incorrect, for the purpose of minimizing, if possible, the amount of business competitive between the two systems, other than the traffic to California points competed for by the Sunset Route as against the Union Pacific-Ogden Route. These figures, however, show a very large business in the aggregate at the time of the merger, which has greatly increased since that date owing to the unprecedented growth of the West. Therefore, even if the figures given were correct and complete they would show but a fraction of the business now conducted over lines that are naturally competitive, and in the transaction of which neither system uses any part of the lines of the other. The following summary of the figures shown upon the *various exhibits introduced by the defendants* shows the vast amount of such competitive business.

Asiatic business, Defts' Exhibits 45-b and 45-c, Fols. 7617 to 7619, including only Southern Pacific proportion

of business through San Francisco, for the year ending June 30, 1901 ... $200,442.00

This includes the business of the Southern Pacific moving through Ogden as well as by the Sunset Route, for the reason that the same is not separated in the figures presented by the defendants, but the exhibit does not show what proportion, if any, of this business moving by Ogden went over the Denver & Rio Grande east of that point. It does not include the Union Pacific revenue on business moving through the port of San Francisco.

Traffic between San Francisco and Portland locally for the year ending June 30, 1901, Defts' Exhibit 46, Fol. 6659 ..... 327,742.35

Traffic between San Francisco and the Willamette Valley for the year ending June 30, 1901, Defts' Exhibit 47-a, Fol. 7629..... 266,649.39

On the exhibit there is a deduction of $77,169.79 as non-competitive. This deduction is a mistake. It was explained by Mr. Stubbs at Folio 6662, as tonnage from the paper mills at Willamette Falls, which he stated were away from the reach of the railroad. Captain Graham, who operates a line of boats on the Willamette River, testified at Folio 4444, in answer to counsel for defendants, that this paper traffic was divided, some going by boat to Portland, thence by boat to San Francisco, and the other being taken across the river by boat to Pulp, a station on the Southern Pacific.

Lumber and other traffic from Portland to Ogden and common points and beyond via the Southern Pacific, the D. & R. G., and via the Union Pacific system, shown on Defts' Exhibit 48, Fol. 6667, being six months in 1900 and 1901, and therefore doubled to make a showing for the year 240,832.08

Traffic to and from Portland and Atlantic seaboard, Pittsburgh and Ohio River common points, (with Chicago, Mississippi River and Missouri River common points territories added), via Sunset and via Union Pacific-Granger Route for fiscal year ending June 30, 1900, is shown on Defts' Exhibit 49, Fol. 6670 et seq..... 648,049.94

Traffic to and from Portland and the Atlantic seaboard, Pittsburgh and Ohio River territories via Southern Pacific and Rio Grande for the year ending June 30, 1900, Defts' Exhibit 50-a, Fol. 7642..... 26,452.11

This does not include any traffic secured by the eastern representatives of the Southern Pacific moving to Ogden by the Union Pacific and thence to Portland over the Southern Pacific.

Hops and wool to the East from Portland for the year ending June 30, 1900, Defts' Exhibit 51, Fol. 6677, moving by O. R. & N., Union Pacific, Southern Pacific and Rio Grande, and the Sunset Route..... 14,497.41

This does not include the wool or hop traffic from the Willamette Valley.

Traffic between San Francisco and Montana and Idaho points, including east-

ern Oregon, Washington and British Columbia, served by the Northern Pacific and competed for, for the service between San Francisco and Portland by the Southern Pacific and O. R. & N. Co., for the year 1900 as to the Southern Pacific, and the year ending June 30, 1900, as to the O. R. & N., Defts' Exhibit 52, Fol. 6681... 52,076.01

Traffic between Atlantic seaboard territory and Colorado and Utah common points via Southern Pacific and Gulf ports via Union Pacific all rail and via Union Pacific and South Atlantic ports for year ending June 30, 1900, as to Southern Pacific, and for Union Pacific computed from figures for October, 1906, and April, 1907, the result of those two months being multiplied by six, Defts' Exhibit 53, Fols. 6685-6..... 995,261.59

To get at a more accurate result and to be entirely fair to the defendants, we should reduce the Union Pacific business shown upon this exhibit to 61½% thereof, as the figures are computed on the same basis as the entire transcontinental earnings, namely, as of October, 1906, and April, 1907. This would reduce the total earnings covered by said exhibit, to about $699,491.13.

Traffic between points in the Willamette Valley served by Williamette River boats, (excluding Portland), and New York, Boston and common points territory, Pittsburgh, Buffalo and common points territory, Cincinnati, Detroit and common points ter-

ritory, and Chicago common points territory moving Sunset Route, for the year ending June 30, 1900, Defts' Exhibits 55-a and 55-b, Fols. 7656-7.. 38,839.78

This is erroneous, as it is much less than the hop traffic alone, as we will show later.

Freight traffic between points in the Willamette Valley, (excluding Portland), served by Willamette River boats moving over the Southern Pacific and Rio Grande to and from the East, for the year ending June 30, 1900, Defts' Exhibits 252-3, Fols. 8159 to 8162..... 9,361.79

These figures are clearly erroneous, for the total movement shown out of the valley from all points including those not served by the Willamette River boats, is only $13,569.97, as shown by Defts' Exhibit 252, which would cover a very small portion of the hop crop alone that moved Southern Pacific and Rio Grande.

Freight traffic between points in the Willamette Valley (excluding Portland) served by Willamette River boats, New York and Boston common points, Pittsburgh, Buffalo and common points, Cincinnati, Detroit and common points, Chicago and common points, Mississippi River and common points, Missouri River and common points, via the Union Pacific system for the year ending June 30, 1900, Defts' Exhibits 250 and 251, Fols. 8147 to 8158..... 22,066.25

This makes a total of $2,546,270.70 after making the deduction above stated on Colorado and Utah traffic. Of this total of upwards of two and a half million dollars, $1,586,790.96, as shown by defendants' Exhibits, is on business other than transcontinental business. Adding that amount to the $16,486,976.93, the total transcontinental business, as hereinbefore stated, we have a total competitive freight business of $18,073,767.99, for the year ending June 30, 1901. It will be observed that in handling the traffic set forth upon defendants' Exhibits just above analyzed, (the revenue from which amounted to over 14% of the total earnings upon all the traffic covered by the allegations in the complaint), the two systems were entirely separate. In transporting this business neither of the roads used any of the rail or boat lines of the other, and there is excluded from this not only the enormous California traffic, but also other traffic that is clearly competitive, as for instance, the business into Montana moving by the Southern Pacific to Ogden, and thence over the Short Line, which was sharply competitive as against the boat line of the O. R. & N. and the rail lines of that company, although the Short Line is also owned by the Union Pacific interests. This was shown by the testimony of Mr. Connor and others. There has been excluded all traffic from the Willamette Valley except that from stations common to the boat line and the rail line, although Mr. Stebbins admitted that he did not know whether the production of this country might not be tributary to stations on the separate lines, although not reached by boat. It seems apparent also that Exhibit 252, showing the freight traffic moving from points in the Willamette Valley by the Southern Pacific and the Rio Grande is erroneous, as the hop traffic alone far exceeds the total given. There is a separate schedule, Exhibit 51, as we

have shown, which gives the revenue on hops from Portland proper, but there is no separate schedule giving the revenue on hops from the Willamette Valley, but Exhibit 252 purports to give the total movement on freight traffic from points in the Willamette Valley over the Southern Pacific and the Rio Grande. Mr. McBride testified at Folio 827 that in 1900 the Rio Grande secured from the Willamette Valley in round numbers 27,000 bales of hops, or the equivalent of 320 carloads, of which about 280 cars went by Sacramento and Ogden. That these figures are undoubtedly correct is shown by Mr. Miller's statement when testifying for the defendants, that in 1900 the Southern Pacific movement of hops from the Valley via Sunset was 47,000 bales, and via Ogden 22,000 bales, which latter would be nearly the equivalent of the 280 cars testified to by Mr. McBride. Mr. Miller testified (Fols. 842-3), that the rate on hops to the East was $1.50 a hundred, of which the Southern Pacific received 60c a hundred for the haul from the Valley to Ogden. At Folio 7548 he said that hops weighed from 180 to 185 pounds to the bale, and in 1900 about 80 bales made a carload, which would be in round figures 15,000 pounds to the car, corresponding to Mr. McCusker's statement at Folio 4714. Applying these earnings of 60c a hundred to carloads of 15,000 pounds, we would have $90 per car as the Southern Pacific revenue from the Willamette Valley to Ogden; and on 280 cars, the movement testified to for 1900 by Mr. McBride, corroborated as we have shown by Mr. Miller, the total revenue would be $25,200 on hops alone; while, as we have shown by the note to the figures from Exhibit 252 in the schedule, the total movement for all classes of traffic, which of course would include fruit and wool and anything else shipped from all points competitive or otherwise in the Willamette

Valley over the Southern Pacific and Rio Grande amounted to only $13,569.97. The probable explanation of this mistake is that the Auditor of the Rio Grande in making up the figures omitted the hop traffic, assuming that it would be put in a separate schedule, as was done in the case of that traffic moving out of Portland proper. Whatever may be the explanation, the mistake is apparent. It is also apparent that there is a mistake in Defendants' Exhibit 55-b, (Folio 7657), giving the total freight traffic from points in the Willamette Valley, excluding Portland, via the Southern Pacific-Sunset Route for the year ending June 30, 1900. This statement shows total revenue from all points whether competitive with the Willamette River boats or otherwise, of $92,739.60. Mr. Miller testified (Folio 7547) that in the year 1900 47,000 bales of hops moved from the Willamette Valley by the Sunset Route. Computing these at the minimum weight stated by him of 180 pounds to the bale we have a total weight of 8,460,000 pounds, which at $1.50 a hundred, the through rate to the East, all of which would accrue to the Sunset Route, made a revenue on hops alone of $126,900. The statements as to O. R. & N. earnings made by defendants are rendered doubtful as to accuracy by the figures shown on the annual reports of this company. (Complainant's Exhibit 213, Fol. 8272.) Nor do defendants' Exhibits include the large traffic in wool, hides and other commodities eastbound out of Utah and Idaho, which moved both West to Sacramento, and thence East by the Sunset Route, and also in connection with the Rio Grande by the Gulf Route in competition with the direct line to the East over the Union Pacific.

It must be remembered also that these figures, vast as they are, do not include any passenger traffic whatever.

We have heretofore shown that the passenger earnings competed for by the Union Pacific boat line and the Southern Pacific rail line between Portland and San Francisco, even when the rail traffic is estimated at what is probably not over one-half of its actual amount, aggregated over $1,300,000 a year at the low rates prevailing previous to the merger. This passenger traffic which defendants' own witnesses testified was competitive was wholly ignored by the trial court in its computation of earnings on competitive traffic. At the request of the complainant the defendants made up certain statistics covering *transcontinental passenger traffic* for the months of September and December, 1900, and September, 1906, and March, 1907. These statistics cover traffic moving to and from the East, and divided as between California, Portland and the Orient, California also including Nevada points, for which the rates are the same via the direct line of the Central Pacific and by the Southern Pacific Sunset, and points in Oregon South of Portland, except on the Willamette River North of Harrisburg formerly reached by the O. R. & N. Co.'s boat lines. Portland includes points on the Willamette River North of Harrisburg, and the oriental business includes all movements to or from China, Japan, the Philippines and Hawaii. These figures are shown on Complainant's Exhibits 123, 124, 125 and 126, Volume IV, page 1872. That this business was actively competitive is shown by many witnesses. Disregarding Southern Pacific earnings on everything except passenger traffic moved by the Sunset Route, and adding together the two months of 1900 and multiplying by six to secure approximate figures for the year, it appears that the revenue of the Union Pacific system for the year 1900 on transcontinental passenger traffic was about $1,137,878.46, and the revenue of the

Southern Pacific Sunset Route on transcontinental business for the same year computed in the same way was $596,092.32. These tables, Exhibits 123 and 124, are incomplete so far as the Southern Pacific lines between Ogden and San Francisco and Ogden and Portland are concerned. They do not show the passenger traffic handled by the Southern Pacific West of Ogden in connection with the Rio Grande. The latter is and always has been a strong passenger route because of the great scenic beauties of the line, and as stated by Mr. Stubbs and others, has always had through cars in connection with the Southern Pacific. That business was, of course, competitive, with the Union Pacific, and there is no showing as to the traffic moving to and from East of the Missouri River by the Southern Pacific, Rio Grande and Eastern connections into Portland, or into any other coast points. As showing the great increase in transcontinental passenger traffic due to the development of the West since 1900, a similar computation made by the use of Complainant's Exhibits 125 and 126 showing transcontinental passenger traffic for September, 1906, and March, 1907, discloses that the Union Pacific system transcontinental passenger revenue for the year, based upon those months, amounted to $2,141,711.58, very nearly double the revenue for the year preceding the merger, and the transcontinental passenger revenue of the Sunset Route for the later year computed in the same way, amounted to $1,566,126.30, or over two and three-quarters as much as the revenue for the earlier year. When it is recalled that all the transcontinental railroads united in selling round trip tickets good one way westbound and another way eastbound, and that the Southern Pacific was, as we have shown by the testimony, energetically by every means known to passenger traffic men, endeavoring to

route its passenger traffic by New Orleans, the Union Pacific on the other hand endeavoring to route traffic by its line, the two competing with each other as strongly as any two transcontinental lines, (Mr. Morse, formerly General Passenger Agent of the Union Pacific, Fol. 2871; Gano, Fols. 2291 to 2301; Smith, Fol. 2416; Hawley, Fol. 1419; Paul Morton, Fols. 1379 & 80; Hurlburt, Fols. 4526, 4530 & 31, 4537, 4539, 4540; Lang, Fols. 5054, 5058, 5059; Guyett, Fol. 5060; Hannaford, Fol. 8043,) we have here presented a tremendous competitive business. Mr. Hawley said that the competition as to this business was very active and involved the entire Eastern passenger business to the coast; Paul Morton that it included both first-class passenger traffic and emigrant passenger traffic. The San Francisco witnesses testified that the competition on eastbound business was equally active. In spite of the millions of dollars involved in this competition on transcontinental passenger business, it was entirely ignored by the trial court in making its computations of the amount of competitive traffic.

Aside from the Union Pacific portion of the Utah and Colorado common points business from New York, which was computed by the defendants in their Exhibit No. 53 on the basis of the figures for October, 1906, and April, 1907, the record for 1900 having been destroyed by fire, all of these figures as to freight earnings relate to the period ending June 30, 1901, June 30, 1900 or December 31, 1900.

This combination of rail and water lines continues, and unless dissolved by the judgment of this court will continue perpetually. Already the development of the west has been such that it is unquestioned that these figures represent but a fraction of the competitive business of the

character covered by these tables, and that business will continue to increase to such an extent that no one today can prophecy its amount in the future. It is probably a conservative estimate that the transcontinental business formerly competed for between the Sunset Route and the Union Pacific Route added to the other competitive business shown upon certain of these schedules, would now amount to about thirty millions of dollars per annum. Certainly such vast traffic, naturally competitive between these two systems, is sufficient in amount to cause the courts jealously to protect it from any acts tending to eliminate competition as to it, or tending to monopolize in a single corporation and its officials the power to control the same.

So long as the business is substantial in amount it is immaterial, as Judge Hook pointed out in his dissenting opinion, what percentage this competitive business may bear to the total earnings of the two companies. The destruction of competition, for instance, between Portland and San Francisco, or between Portland and Salt Lake City, should not be passed over and endorsed by the court merely because the Union Pacific may secure large earnings upon its local business in the state of Nebraska, or because the Southern Pacific may earn large sums of money between El Paso and New Orleans or locally in California. These great territories in the West, where the rapid development of the country is taking place, are entitled to be protected against monopoly, irrespective of whether that monopoly is created by the consolidation of two lines serving only that portion of the United States, or serving other portions in addition.

PURSUANT TO THE CONSPIRACY CHARGED IN THE COMPLAINT, THE UNION PACIFIC ACQUIRED A MAJORITY OF THE STOCK OF THE NORTHERN PACIFIC FOR THE EXPRESS PURPOSE OF CONTROLLING THAT LINE AND INDIRECTLY CONTROLLING THE CHICAGO, BURLINGTON & QUINCY, BOTH OF WHICH ARE COMPETITORS OF THE UNION PACIFIC.

Almost contemporaneously with the acquisition of the Southern Pacific, carrying with it the Panama Route, the defendants proceeded through their fiscal agents, Kuhn, Loeb & Co., to acquire the stock of the Northern Pacific Railway Co. This stock was purchased in the market, and the contest for the control of that company brought about the famous Northern Pacific panic of May, 1901. The firm of Kuhn, Loeb & Co. bought this stock and turned it over to the Union Pacific in large blocks, beginning April 15, 1901 with 100,000 shares of preferred and 150,000 shares of common stock. (Kahn, Fols. 2006-9-10.) They continued to purchase and turn over large blocks, as shown by letters passing between the fiscal agents and the chairman of the executive committee, and the same correspondence also discloses sales to the fiscal agents of the balance of the bonds of the 100,000,000 issue. (Fols. 2013-14-17-18.) The defendant Kahn expressed his pleasure at the dexterity with which his firm had purchased this Northern Pacific stock, in the following language:

> "I may say we did pretty well in buying the Northern Pacific stock, because we bought about seventy millions of it before anybody had any idea we were doing it." (Fol. 2024.)

In the aggregate there was purchased a clear majority, and as defendants supposed, the control. (Testimony of Harriman, Fols. 5152, 5158.) This stock, having been acquired by the Union Pacific, was, like the stock of the Southern Pacific, turned over to the Short Line, and the securities of that company were issued for it, partly to the public and partly to the Union Pacific.

Complainant's Exhibit 63, Folios 467-8, gives the details of the transaction, showing that the Short Line turned over to the Union Pacific certain purchase money certificates in cash, and assumed certain indebtedness. That was afterwards funded finally into the shape of Oregon Short Line Railroad 4% refunding bonds. (Complainant's Exhibit 71, Folio 482.) The Northern Pacific Railway Co. and the Great Northern Railway Co. had jointly just before this, bought the capital stock of the Chicago, Burlington & Quincy, a large railway system *admittedly competitive with the Union Pacific,* although the latter fact seems to have been overlooked by the learned judge who wrote the opinion of the majority of the court below. The utter recklessness with which the defendants pursued their course of violating the Anti-Trust statute, which had been begun by the purchase of the Southern Pacific stock, is shown by their own admissions. We quote from the testimony of defendant Kahn, (Fol. 2020):

> Q. You knew at the time you bought this stock of the Northern Pacific and turned it over to the Union Pacific, of which you were an executive committeeman, that the Northern Pacific and Great Northern had jointly acquired the Burlington?
>
> A. Yes.
>
> Q. You knew that for a large part of the distance traversed by the Union Pacific, it was an

active competitor with the Burlington, didn't you?
* * *

A. Yes.

Q. You knew that on transcontinental business, the Northern Pacific was a competitor with the Union Pacific, didn't you?

A. Yes.

Q. You knew that?

A. Yes.

Q. Will you explain to me, then, why knowing those facts, and of course knowing the law, being a banker, you sought to acquire the control of a competing line in violation of law?

A. To begin with, knowing the law, being a banker, there is a difference between a banker and a lawyer, and a difference between a banker's understanding of the law and a lawyer's understanding of the law, sometimes. I mean that in this sense, that the banker is not competent to judge of the niceties of the Interstate Commerce and anti-trust laws.

Q. Did that occur to you in connection with the matter?

A. It did to such an extent that it was a factor in determining the risk we ran. We bought the Northern Pacific stock *at a very great risk, legal and otherwise.*"

The defendant Schiff also testified that at the time of this purchase he knew that the Union Pacific and Northern Pacific were competing for business to the coast by way of Portland. (Fol. 1803.) Below we show by reference to the testimony of many witnesses that these two defendants were not mistaken in stating that a violation of the law was being perpetrated by this acquisition. The subsequent history of this Northern Pacific stock all appears in the litigation that came to this court entitled *Harriman v. Northern Securities Co.*, 197 U. S. 244. While Mr.

Kahn was right in extolling the cleverness of his firm in purchasing this enormous block of stock without the public being advised of the fact, they made one mistake, namely, they only secured a minority, although nearly a majority, of the common stock of the corporation, which had the right under the charter to pass a vote for the retirement of the preferred stock. Finding themselves in that position they joined with other parties in another violation of law, to-wit, the Northern Securities Co., putting into that company the bulk of the holdings of the Northern Pacific they had thus secured. They were induced to do this solely because the majority of the common stock which controlled the company was held by parties adverse to the Union Pacific. After the declaration by this court that the Northern Securities Co. constituted a combination in violation of law, the stocks of the Northern Pacific and the Great Northern Railway Companies held by that corporation, were distributed pro rata among the owners of Northern Securities stock. During the progress of the formation of the Northern Securities Co. the preferred stock of the Northern Pacific had been retired and an equal amount of common stock had been issued in its place, so that the Northern Securities Co. was the holder of substantially all of the stock of the Northern Pacific, it being of one class. Therefore, if the defendants could have secured, upon such distribution, Northern Pacific common stock of the same par value as both the common and preferred stock they had thus purchased, they would have been placed in control of the Northern Pacific. The Union Pacific organization, persisting in its desire and intention to obtain control of another transcontinental line and to absolutely shut the door at Portland, objected to the plan of distribution proposed which left them in a minority in both the

Northern Pacific and Great Northern. Their protest being unheeded, they brought the suit in the Circuit Court of the United States for the District of New Jersey entitled Harriman et al. against Northern Securities Co., to which we have above referred. The suit was brought in the name of Mr. Harriman and an associate, as they held the Northern Securities stock as trustees for the Oregon Short Line. This court, in a unanimous decision, speaking through the late Chief Justice, said:

> "It is clear enough that the delivery to complainants of a majority of the total Northern Pacific stock and a ratable distribution of the remaining assets to the other Securities stockholders, would not only be in itself inequitable, but would directly contravene the object of the Sherman Law and the purposes of the government suit. The Northern Pacific system, taken in connection with the Burlington system, is competitive with the Union Pacific system, and it seems obvious to us, the entire record considered, that the decree sought by complainants would tend to smother that competition."

The last effort so made to further monopolize the transportation business of this great western territory through the control by defendants of the Northern Pacific Railway system, thus failed, but it was through no lack of effort upon the part of the conspirators that it failed. That the Northern Pacific and the Union Pacific were competitors for transcontinental traffic is conclusively shown by the testimony.

Mr. Morton testified, after speaking of the Southern Pacific and the Santa Fe:

> "Q. In addition to the transcontinental lines that you have already mentioned, what other transcontinental lines were there prior to 1901?

A. There was the Northern Pacific and the Great Northern and the Canadian Pacific.

Q. What lines were in competition at that time for the transcontinental business?

A. They were all more or less in competition with each other." (Folio 1368.)

Mr. Hawley testified:

"Q. What lines of transcontinental railroads were there say, in the year 1900, or up to the purchase of the Southern Pacific stock by the Union, which you recall, in the spring of 1901—what transcontinental lines were there competing for the through business to the coast?

A. What do you term transcontinental lines?

Q. West of the Missouri River lines.

A. The Union, the Atchison, the Texas & Pacific, and the Southern Pacific?

Q. And the northern lines?

A. The Northern Pacific and the Great Northern. (Folio 1413.)

Mr. Stubbs testified:

"Q. Will you tell me whether the Pacific lines, the Northern Pacific, is competing with the Union Pacific and Southern Pacific, and how they do compete for transcontinental business?

A. Why, I think so.

Q. How do they do it?

A. In every known way.

Q. Name them, we want to find out.

A. They do it through their officers, they do it through service, they do it through their soliciting agents, and they do it in a thousand and one ways.

Q. And you do it in the same way as against them?

A. Yes.

Q. You do it yourself by looking after the general traffic, don't you?

A. Yes.

Q. And your assistants do it by looking after the Union Pacific and Southern Pacific?

A. Yes.

Q. And your general freight agents do it by looking after the Union Pacific and Southern Pacific?

A. That is, you are speaking now about our competing with the Northern Pacific?

Q. Yes.

A. Yes.

Q. And your soliciting agents throughout all the United States, where they are after traffic, are hustling against the Northern Pacific?

A. I think so." (Folios 553-4.)

Mr. Hahn, of Portland, testified that goods for his store from the east came over the Union Pacific, Southern Pacific, Northern Pacific and Great Northern. (Folio 666.)

Mr. Honeyman, another wholesale merchant, testified (Folio 684) that prior to 1901 there was active competition at Portland between the soliciting agents of the O. R. & N., the Southern Pacific and the Northern Pacific, and that his business moved over all those lines; also the Great Northern.

Mr. Hall, of the Honeyman Hardware Co., testified that his business is solicited by the Northern Pacific as well as the other lines. (Folio 693.)

Mr. Gill gave the same testimony. (Folios 697-8.)

Mr. Montgomery, of the Gill Co., gave the same testimony. (Folio 702.)

Mr. Ehrman gave the same testimony. (Folio 708.)

Mr. McCusker testified that shipments from the Willamette Valley were solicited by the Union Pacific, Northern Pacific and Great Northern. (Folio 714.)

Mr. Smith, formerly General Agent of the Pennsylvania in New York, testified that freight moved from New York to Portland prior to 1901, over the O. R. & N., the Northern Pacific, the Great Northern and Southern Pacific. (Folio 1521.)

Mr. Banham, of the Otis Elevator Co., said their Portland traffic moves by the Northern Pacific or the Union Pacific. (Folio 1739.)

Mr. Gregory, Traffic Manager of the Central Foundry Co. and its subsidiaries, said their business to the North Pacific Coast is solicited and moves over the Great Northern, Northern Pacific and Union Pacific. (Folio 1753.)

Mr. Henry, of the Standard Sanitary Manufacturing Co., formerly with the Pressed Steel Car Co. and the American Window Glass Co. testified business to Portland goes by the Northern Pacific, Great Northern or Union Pacific. (Folio 2096.)

Mr. Paar, of Diebold Safe & Lock Co., same testimony. (Folio 2122.)

Mr. Townsend, Traffic Manager of National Tube Co., same testimony. (Folio 2131.)

Mr. Ogden, of the Jones & Laughlin Steel Co., same testimony. (Folio 2142.)

Mr. Lent, Traffic Manager for a number of shippers at Pittsburg, said the Union Pacific and Southern Pacific, Northern Pacific, Great Northern and Santa Fe all had soliciting agents in Pittsburg. (Folio 2174.)

Mr. Gano, Freight Solicitor of the Union Pacific in Cincinnati, testified that the Northern Pacific had a soliciting agency and was very actively competing for Portland business out of Cincinnati. (Folio 2318.)

Mr. Buchanan gave the same testimony. (Folio 2340.)

Mr. McDowell, of the Atlas Engine Works, in Indianapolis, same testimony. (Folio 2383.)

Mr. Bean, of the Thomas Manufacturing Co., farm machinery, Springfield, Ohio, said Portland business is solicited by the Northern Pacific and the Union Pacific, and moves both ways. (Folio 2393.)

Mr. Mayer, of the Mosler Safe Co., same testimony. (Folio 2401.)

Mr. Smith, formerly solicitor of the Union Pacific at Cincinnati, testified business into Portland was competed for against him by the Northern Pacific and Great Northern. (Folio 2412.)

The following witnesses also testified to the competition between the Union Pacific system and the Northern Pacific:

Mr. Gothlin. (Folios 2439-40.)

Mr. Shewalter, of Mast, Foos & Co., Springfield, Ohio. (Folio 2500.)

Mr. Cory, of James Leffel & Co. (Folio 2503.)

Mr. Blum, of the Globe-Wernicke Co. (Folio 2514.)

Mr. Vosmer, formerly with the Globe-Wernicke Co. (Folio 2518.)

Mr. Hedges, of the Peruna Co. (Folio 2522.)

Mr. Doyle, of the Fay & Egan Co. (Folio 2526.)

Mr. Berndt, of the Andrew Jergens Co. (Folio 2543.)

Mr. Freiberg, a distiller at Cincinnati. (Folio 2550.)

Mr. Coakley, American Steel & Wire Co. (Folios 2558-9.)

Mr. Boltz, of the National Petroleum Association. (Folio 2573.)

Mr. E. D. Ryan, of the Milburn Wagon Co. (Folio 2615.)

Mr. Rand, formerly Union Pacific solicitor at Cleveland. (Folio 2628.)

Mr. Longacre, Atlantic Terminal Line, an association of manufacturers. (Folio 2633.)

Mr. Rushforth, of the Tyler Wire Works. (Folio 2645.)

Mr. Gordon, of the Anderson Carriage Co., Detroit. (Folio 2656.)

Mr. Evans, of Sherwin & Williams Co., Cleveland (Folio 2660.)

Mr. Wicks, of the Erie Iron & Steel Co. (Folio 2699.)

Mr. Peck, of the Brown Hoisting Machinery Co., Cleveland. (Folios 2700-2701.)

Mr. Wentz, formerly Rock Island Agent at Chicago. (Folio 2832.)

Mr. Evans, formerly with the Great Northern at St. Paul. (Folio 2885.)

Mr. Brolin, Skandia Furniture Co., Rockford. (Folios 2892-3.)

Mr. Evi, Traffic Manager of Deere & Co., Moline (Folio 2897.)

Mr. Jilson, of Emerson Manufacturing Co., Rockford (Folios 2916-17.)

Mr. Younge, Acme Harvester Co., Peoria. (Folio 2928.)

Mr. Montgomery, International Harvester Co. (Folio 2956.)

Mr. Bell, of the Crane Co. (Folio 2972.)

Mr. Morrison, formerly agent of the Chicago, Milwaukee & St. Paul at St. Paul. (Folio 3025.)

Mr. Cribben, stove manufacturer at Chicago. (Folio 3092.)

Mr. Barker, Chicago representative of Jones & Laughlin. (Folio 3115.)

Mr. Wait, of Hibbard, Spencer & Bartlett Co., Chicago. (Folio 3157.)

Mr. Wilmore, Sefton Manufacturing Co., Chicago. (Folios 3164-5.)

Mr. Heinrichs, of Becker & Co., trunks, Chicago. (Folio 3177.)

Mr. Sage, of Fairbanks, Morse & Co. (Folio 3198.)

Mr. Field, of the Wrought Iron Range Co., of St. Louis. (Folio 3828.)

Mr. Gesarich, Moon Bros. Carriage Co., St. Louis (Folio 3848.)

Mr. Schoenhard, Charter Oak Stove & Range Co., St. Louis. (Folios 3864-5.)

Mr. Broderick, of Broderick & Bascomb Rope Co. (Folio 3870.)

Mr. Feickert of Lemp Brewing Co., St. Louis. (Folio 3874.)

Mr. Muehlberg, Traffic Manager Anheuser-Busch Co., St. Louis. (Folio 3881.)

Mr. Reicke, stove manufacturer, St. Louis. (Folio 3885.)

Mr. O'Reilly, formerly with the Union Pacific at Portland. (Folio 4340.)

Mr. Burdick, shipper of dried prunes, Portland. (Folio 4384.)

Mr. Adams, General Freight Agent of the North Bank Road. (Folio 4430.)

Mr. Hurlburt, formerly Passenger Agent of the Union Pacific, Portland. (Folio 4528.)

Mr. Harrison, Vancouver & Lewis River Transportation Co. (Folio 4586.)

Mr. Elmore, shipper of canned salmon. (Folio 4601.)

Mr. Crichton, of the Columbia River & Puget Sound Transportation Co. (Folio 4615.)

Mr. McGuire, wholesale paper, Portland. (Folio 4622.)

This testimony could have been multiplied indefinitely In view of the admissions of the defendants and their officials and of the uncontradicted testimony of all these shippers and railroad men, it is difficult to understand why in their answers, the defendants have denied the competition between the Union Pacific system and the Northern Pacific. Upon this question, as well as the competition between the Burlington system and the Union Pacific, we might well be content to rest upon the decision of this Court in the case of *Harriman v. Northern Securities Co.*, where it was directly decided, but so long as the issue was tendered, we felt it our duty to prove this competition beyond controversy.

The excuse now given by the defendants for the purchase of the Northern Pacific stock is additional proof of the reckless manner in which they proposed to and did violate the anti trust statute. It appears from the testimony of the defendant Schiff that Mr. Harriman and himself had conferences with Mr. Hill, who dominated the Northern Pacific and Great Northern purchase of the Chicago, Burlington & Quincy, at which conferences demands were made that the Union Pacific should have an interest in this purchase, and when asked what interest the Union Pacific had in what was done with the Burlington, he said:

> "While it was to some extent a sharp rival, it was always able to get along with it, but the managers of the Union Pacific did not know, with two new interests coming into that territory, what might become of the Burlington and what *havoc might be played with existing competitive conditions which were entirely satisfactory.*" (Fol. 1802.)

And the defendant Kahn testified:

> "Mr. Harriman felt that, with Mr. Hill the controlling factor in the Burlington, the situation would be changed very much, to the detriment of the Union Pacific. *He knew that there was competition between the Union Pacific and the Burlington;* he might have preferred if there had not been any at all, but he knew that could not be, and he preferred to 'bear the ills he had rather than fly to others that he knew not of,' especially when the dispenser of those ills was a man at one time so little friendly to him as Mr. Hill. * * * In March, 1901, if I remember the date rightly, the acquisition by the

> Northern Pacific and Great Northern of the Burlington was definitely announced. Prior to that time there had been repeated approaches made by the Union Pacific interests to obtain from the new owners of the Burlington some kind of recognition in the way of binding arrangements which would protect the Union Pacific against the dangers which it foresaw from hostile control of the Burlington. Those approaches and efforts on the part of the Union Pacific finally came down to a request for a third or a half interest in that purchase, so that the Union Pacific interests could be in a position to watch and see that their own interests were not sacrificed, and this request on the part of the Union Pacific was finally flatly and definitely refused, and they were told that no kind of participation in the purchase could be given to them. Thereupon the Union Pacific interests served notice that they considered that a hostile act, and that they would have to take such measures as seemed to them best to protect their interests." (Folio 7872.)

What better evidence could be offered as to the intent on the part of these defendants to eliminate and control competition in transcontinental traffic, than this? The claim asserted at some places in the testimony that the purchase of the Northern Pacific was an entirely separate and distinct transaction from the Southern Pacific purchase and not pursuant to any general scheme or intent to monopolize business in the transcontinental territory, is negatived by the testimony of the defendant Kahn when testifying in answer to his own counsel. He stated that at the time the hundred million convertible bond issue was made, the first forty millions of which were issued for the specific purpose of purchasing the Southern Pacific stock, the balance being eventually used in payment for the Northern Pacific stock, the very fight that ensued within a few weeks

was in contemplation. After stating that one reason for issuing the hundred million of bonds when only forty million dollars were immediately needed, was that it was a measure of convenience, he proceeded:

> "That was the first reason. The second was that at that time there were reports,—very definite reports—that the Hill interests were going to acquire the Burlington. Mr. Harriman was quite clear in his mind, and so were we all quite clear in our minds that if the Burlington were acquired by interests antagonistic to the Union Pacific, one of two things would happen; the Union Pacific would go and ask for representation for a share in that purchase, so as to leave the existing situation as between the Burlington and the Union Pacific undisturbed. If it got it, well and good. If it did not get it, it would fight—it would protect itself as best it could against what it considered a danger, and for that purpose money was required to face a situation which in Mr. Harriman's mind it was quite clear would lead to one of two things: either he would be given a share in the Burlington, in which case he would need money to pay for his share; or he would not be given a share in the Burlington, in which case he would fight, and for fighting he would not know exactly what way and where the fight would take place, how he would use his money, but he knew he would use his money for attack and defense, and when a man prepares for such a fight, or makes such a fight, what he needs is brains and courage and money." (Folio 7868.)

Thus, according to defendant's own story the Union Pacific prepared itself at the time of the Southern Pacific purchase, with funds with which to fight for the acquisition of a further monopoly, and with those funds it purchased the control of the Northern Pacific Railway Com-

pany. That these transactions were substantially contemporaneous is shown by the fact that the meeting of the board of directors of the Union Pacific Railroad Company, at which the issue of the hundred millions of convertible bonds was authorized, was held on February 20, 1901. (Complainant's Exhibit 17, Fol. 110.) Defendant Kahn testified that towards the end of February, 1901, he was at the Hot Springs, Virginia, and received a letter from his partner, defendant Schiff, telling him that he had exhausted all efforts to bring about a recognition of the claims of the Union Pacific to be allotted a share in the purchase of the Burlington, and that the protection of the Union Pacific could only be brought about, as far as he could see, by purchasing a control of the Northern Pacific, which owned one-half of the Burlington stock. (Kahn, Fol. 7875.) But that is not all. It was no new thought on the part of the Union Pacific to procure control of the Burlington. The latter is a great system of railways. It has its Western terminus at Denver, at which point it connects with the Denver & Rio Grande, and was thus in position to form part of a powerful competitive line with the Union Pacific. It appears by the testimony of Mr. Kahn that in 1900, Mr. Harriman and his associates received information that the people who were then in the active control of the Burlington, mainly New England people, were thinking of retiring from the active management. He then says:

> "Mr. Harriman with our knowledge entered into negotiations with them for the purchase of their holdings, which, if I remember rightly, amounted to something like ten or fifteen per cent of the total of the Burlington stock."

He says these negotiations continued throughout 1900, and that the relations between the Union Pacific and Bur-

lington, so far as they were competitive, were "actively competitive, but they were fairly competitive." (Fols. 7869 & 70.) *No fears of a Northern invasion prompted this action, as the Northern Pacific-Great Northern purchase of the Burlington was not proposed until months later.* It is very significant that there is no pretense that the Union Pacific merely wanted to acquire ten or fifteen per cent of the stock of the Burlington road as an investment, but the defendants wanted to buy the stock of the persons then in control of the property, so that the competition between the two systems might not be increased. On cross-examination Mr. Kahn says that it was proposed to buy the holdings of Mr. Perkins, the then President of the C. B. & Q., and his immediate associates. (Folio 7912.) With all his cleverness Mr. Kahn was unable to explain away this dominating desire for power and control which animated the Union Pacific in these negotiations.

Thus, when fully considered, it will be seen that the excuse given for the Northern Pacific purchase, instead of aiding the defendants in their attempt to deny an intention to violate the law by restraining competition in transcontinental railway traffic, conclusively establishes that such intention and desire existed.

At Folios 5648-9 it is stipulated that the Union Pacific and Oregon Short Line have disposed of all of the stock of the Northern Pacific Railway Co., and the Great Northern Railway Co., formerly owned by them, and that at that time, neither of said companies owned, directly or indirectly, any stock of either said Great Northern Railway Co. or the Northern Pacific Railway Co., and that the Southern Pacific Co. and the Oregon Railroad & Naviga-

tion Co. have never owned any stock in either the Northern Pacific or the Great Northern.

We have demonstrated that these lines are competitors of the Union Pacific, and being such competitors, it is the contention of the Government that it is unlawful for the Union Pacific to own any stock in said lines. We have shown by the testimony that the stock of the Northern Pacific was purchased for the purpose of securing control and with knowledge that such purchase was unlawful. The evidence with reference to the Northern Pacific is, therefore, in the highest degree material as tending to prove the allegation of the formation and extension of a conspiracy to monopolize the transportation business in the transcontinental territory; and because the defendants have disposed of their stock, the proof is none the less important. And the Government is entitled, under the rule laid down in the Trans-Missouri case. to have an injunction against the re-acquisition of stock in such competitive lines although pending the trial the defendants have sold their stock.

THE OWNERSHIP OF HALF OF THE STOCK, AND THE CONTROL OF THE DEFENDANT SAN PEDRO, LOS ANGELES & SALT LAKE ROAD, BY THE DEFENDANT OREGON SHORT LINE, IS ANOTHER RESULT OF THE CONSPIRACY COMPLAINED OF, AND IS UNLAWFUL.

Previous to the construction of what we will term the San Pedro road, transcontinental business to southern California had moved Sunset or by Ogden in connection with Central Pacific and the Southern Pacific lines leading to Los Angeles from Sacramento and San Francisco. As to traffic between Utah points and both Northern and Southern California the Southern Pacific had a monopoly. It is true a line into California might have been made over the Rio Grande to Colorado, thence South to the Santa Fe, and by that route to California, but it would hardly be claimed to be a feasible route. Therefore the Southern Pacific had a substantial monopoly of all that business. To Southern California this was a rather roundabout route from Utah, and as a result there had been a great deal of agitation for a direct line from Salt Lake to Los Angeles. The distance from Salt Lake to Los Angeles is about the same as from Salt Lake to San Francisco. It appears by the time table put in by defendants' counsel in connection with the cross-examination of the witness Moore, (Folios 4269-71), that by the San Pedro route it is 781 miles from Salt Lake City to Los Angeles. The distance from Ogden to Salt Lake City is 37 miles. Therefore the distance from Ogden to Los Angeles over the San Pedro road is 818 miles. It appears by the testimony of Mr. Babcock, (Folio 3961), that the Southern Pacific mileage from Ogden to San Francisco is 786 miles, or 823 miles from Salt Lake.

Thus traffic moving to Los Angeles by the Southern Pacific-Ogden route would have to be moved between 300 and 400 miles farther than by the direct line, Sacramento being 90 miles East of San Francisco, and therefore a few miles less than 700 from Ogden, and the distance from Sacramento to Los Angeles being between 400 and 500 miles. This is not in any sense, however, a prohibitory difference so far as competition is concerned, as it is only about the same difference as that between the Union Pacific and the one made up of the Burlington and Rio Grande from Omaha to Salt Lake, and those lines are active competitors. The Union Pacific system through the ownership of the Oregon Short line reaches Salt Lake; the Denver & Rio Grande with its Eastern connections also reaches Salt Lake. Therefore, an independent line of road from Los Angeles to Salt Lake would be in a position to interchange business freely with the two lines leading to the East, and the Southern Pacific being controlled by the Union Pacific, such independent line would be in a strong position to conduct in connection with the Rio Grande, an active competition on Southern California transcontinental and local business and in connection with the Santa Fe which it crosses, it could maintain a competition between Salt Lake and San Francisco, and divert a great deal of traffic that had previously moved by the Sunset Route of the Southern Pacific, as well as by the Ogden Route in connection with the Union Pacific.

UNION PACIFIC TOOK NO STEPS TO CONSTRUCT LINE TO LOS ANGELES UNTIL INDEPENDENT ROAD WAS ASSURED AND UNTIL AFTER ARRANGEMENT WAS CONCLUDED TO PURCHASE SOUTHERN PACIFIC STOCK.

It appears by the testimony to which we will call attention in detail, that previous to the projecting of the line of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company by Senator Clark and his associates, no move had been made by the Union Pacific to fill this gap, although the Oregon Short Line owned lines of road in southern Utah, including a line from Salt Lake to Milford, which is now a part of the main line of the San Pedro road, 207 miles in length, and had an option upon a line built by Mr. Eccles and his associates from Milford to Uvada, 76 miles more, making a total mileage of 283 miles. Some time after the late defendant Harriman became the dominating factor in the Union Pacific, Mr. Gibbon, then General Counsel and Vice President of the Los Angeles Terminal Railway Co., which eventually became a part of the San Pedro road, of which he was also later on General Counsel and Vice President, went to Seattle to see Mr. Harriman and endeavored to induce him to extend the Union Pacific line to Los Angeles, but there was no result from this conference. (Fols. 5439-40.) Nor, in fact, was any move made by the Union Pacific organization to build to Los Angeles in opposition to the line of Senator Clark and his associates until after the Union Pacific had acquired control of the Southern Pacific or the negotiations had proceeded to an extent that rendered it certain that such control would be secured. It is important, in considering the situation with reference to these roads, to keep the dates in mind. It appears by the testimony of Mr. Love that he was a member of the State Senate of Utah, elected

in the fall of 1900 for the session beginning in January, 1901. Previous to the meeting of the legislature in January, he was called upon by the general counsel of the Union Pacific, Mr. Pierce, who presented to him a bill amending the corporation laws of Utah, and explained that the Union Pacific was going to reorganize or change its organization in some way and desired to have some additional legislation (Folio 4069), and that it involved the payment of $25,000 of fees to the State by the corporation. (Folio 4076.) This bill presented by Mr. Pierce, was passed by the legislature and approved January 18, 1901. Certain other legislation was also passed at the same session at the instance of the Union Pacific, as shown by the testimony of Mr. Lawrence, another state senator, who was present at the interview between Mr. Pierce and Mr. Love. Mr. Lawrence testified that they met Mr. Pierce at his hotel in Salt Lake early in January to go over a measure that he desired to have passed. He explained to them that it was proposed to increase the capital stock, and that there would be a state fee of 25 cents on every thousand dollars worth of stock. This would make a fee of $25,000, as testified to by Mr. Love, on the hundred million increase in capitalization of the Union Pacific in the spring of 1901. Mr. Lawrence testified as follows:

> "Q. Now, Mr. Lawrence, there seems to be a bill here, chapter 2 of the Laws of 1901; another one relating to railroad corporations as chapter 3 (chapter 2 was approved on the 18th of January and chapter 3 on the 4th of February); and a third law, chapter 26, which relates to railroad corporations, and was approved on the 7th of March, which, among other things, repeals the law approved on the 18th of January, and the law approved on the

4th of February. Will you state the history of that legislation as you recall it?

A. I will say that the railroad law of this state, from 1897 practically, has undergone a very rapid evolution, as shown by the work of that session. The first two measures that were passed in the early part of the session were repealed by the third, under the pretence of codifying the railroad law of the state; but in comparing the bill with the existing law at that time we found some changes and some new legislation in it. But these two earlier measures were passed at the urgent request of the representatives of the Oregon Short Line and the Union Pacific Railroad companies.

Q. What about the third one?

A. It is the same way." (Folios 4162-3.)

It thus appears that early in the year 1901, for the purpose of acquiring stocks, it was desired to have the powers of the Union Pacific and the Oregon Short Line or any other railroad organized under the laws of Utah, amplified. The capital of the Union Pacific was increased $100,000,000, so as to make possible the issuance of $100,000,000 of convertible bonds. Mr. Harriman testified (Folio 1290):

"Q. What is the basis upon which you capitalized the Union Pacific Railroad Company?

A. I didn't capitalize the Union Pacific Railroad Company.

Q. You added $100,000,000 of convertible bonds, did you not?

A. Yes, for a specific purpose.

Q. What was that purpose?

A. To purchase the Southern Pacific and Northern Pacific."

He further stated that when they decided to issue these convertible bonds, they had in mind simply the purpose

of acquiring Southern Pacific stock, and afterwards acquiring Northern Pacific stock. (Folios 1263-4.)

There is no suggestion anywhere in the testimony that any part of this hundred million dollars was to be used to build to Los Angeles. This latter was an undertaking of such magnitude that the financing of the same would necessarily have received careful attention if any such line had been in contemplation. As we have said, the distance from Salt Lake to Los Angeles is 781 miles, and from Milford, (207 miles South of Salt Lake), which was the furthest point to which the Union Pacific rails then extended, it was 574 miles. And after purchasing the line built by Mr. Eccles and his associates from Milford to Uvada, 76 miles more, there still remained to be constructed 498 miles to Los Angeles. It appears by the testimony that even the old grade built twelve years before, which we will hereafter discuss, only extended an additional forty miles. Therefore it was necessary to entirely construct a very long mileage, much of it very expensive, through mountain canyons, and still, so far as appears from any records or from the testimony of any witness either on the part of the plaintiff or the defendant, no move had been made by these wise financiers in control of the Union Pacific to raise the vast sum of money necessarily demanded. This would seem conclusive evidence that no such construction was then in contemplation.

Until the Union Pacific secured control of the Southern Pacific, it was naturally for its interest to have the independent line built. Its construction involved no outlay on the part of the Union Pacific. Every pound of freight that could be diverted from the Sunset Route through the Salt Lake gateway would be the subject of competition between the Union Pacific and the Rio Grande, and the Union Pa-

cific would have at least an equal opportunity to get it, but after the control of the Southern Pacific was secured so that the Union Pacific organization controlled not only the Sunset Route but the Ogden Route, it appeared essential to the continuance of its partial monopoly on the transcontinental business and its absolute monopoly of the traffic between Utah common points and California that any new line constructed into that territory should be controlled by it. By exercising control over the Southern Pacific, it became a preferential route and could largely monopolize the traffic by discriminating against the Rio Grande. If a new line should be built to Salt Lake, there connecting with the Rio Grande as well as the Union Pacific, its ability to monopolize the transcontinental business would largely be gone, because the natural action to be taken by such new and independent line would be to ally itself, perhaps, more strongly with the Rio Grande than with the Union Pacific. These facts should be borne in mind in considering what was done in connection with defeating the construction of the independent line proposed to be built by Senator Clark; and these considerations absolutely tally with the attitude that had been assumed by the Union Pacific and its lack of action in connection with the line to Los Angeles until after the control of the Southern Pacific had been secured.

THE SAN PEDRO WAS PLANNED AS AN INDEPENDENT ROAD. THE UNION PACIFIC COMMENCED THE CONSTRUCTION OF A PARALLEL LINE ONLY AFTER THE BUILDING OF THE INDEPENDENT LINE WAS ASSURED.

Mr. Eccles testified that about 1890 a line of road had been projected down into Nevada from Milford across the desert to the head of the canyon that runs down to the Meadow Valley Wash; that the grade was completed to the head of the canyon, most of the grading done down the canyon, and the tunnels all built and timbered nearly to the Meadow Valley Wash. Mr. Eccles further said that in 1898 he and his associates built what was called the Utah & Pacific, being a line from Milford to Uvada near the state line. He then testified:

> "Q. What was done with that work which had been graded up there and the tunnels, and all that, between the time of their construction and the time you built the Utah & Pacific?
>
> A. It was abandoned, and the understanding was that they were not going to do any more with it."

That is, from 1890 to 1898, nothing has been done with this projected line of road. (Folios 4015-16.) He further testified, at Folio 4019, that in building the Utah & Pacific line, he utilized that old grade and right of way. He purchased steel from the Oregon Short Line, and made certain other arrangements with it, and the Oregon Short Line having at a foreclosure sale acquired whatever rights the old corporation had, that had graded this abandoned line and dug the tunnels, he gave the Oregon Short Line an option, running for five years, to purchase the line of the Utah & Pacific. This contract appears in the record at Folios 4022 to 4034 inclusive. It was not even pretended,

as will be seen by Article 5 of this contract (Folio 4026), that the Short Line had a title to this old grade, but it was apparently claimed that they had some rights to it, for the language used is not that of a grant, but simply that it, the Short Line, would waive, in favor of the Utah & Pacific, any rights which it might have to that railway grade from Milford southwesterly for a distance of not less than 75 nor more than 85 miles. It was apparently considered by the Short Line as of slight importance. Mr. Eccles further testified (Folio 4017) that he remembered when it first became public that Senator Clark and his associates proposed to build the San Pedro road, or a line of road from Salt Lake to Los Angeles, and that up to that time the Short Line had not exercised its option or taken over this property, but that a man he afterwards learned represented the Clark interests was negotiating with him to purchase it, and a month or two later the Short Line exercised its option. (Folios 4017-18.) He further testified that the Short Line exercised its option early in the year 1901. Mr. Kelly fixed the exact date as April 9, 1901. (Folio 7980.) It appears by the testimony of Mr. Whittemore, who was counsel of the San Pedro road, that a hearing was had in the land office at Carson, Nevada, on the 11th of March, 1901, between the Utah & California Company, which was the corporation under which the San Pedro Co. was then conducting its operations on the one hand, and the Short Line on the other, and as late as that time testimony was offered that it was the purpose of the Oregon Short Line to complete its road *down into Nevada on the line of the old grade which ran down to the head of the Meadow Valley Wash, and from thence a branch up to Pioche.* (Folios 5400-1.) This old right of way was the subject of litigation in the land office and in the courts, as

shown by Complainant's Exhibit 170, Folios 5176 et seq.; Complainant's Exhibit 171, Folios 5206 et seq.; Complainant's Exhibit 172, Folios 5239 et seq.; and Complainant's Exhibit 173, Folios 5298 et seq.

Shortly after, when it was apparent that the Clark road was going on to California irrespective of the ownership of this old grade, the Short Line put its men at work surveying in the Meadow Valley Wash towards California.

In the litigation a restraining order was issued on the 27th of April, 1901, in favor of the Utah, Nevada & California Railroad Co., which was controlled by the Oregon Short Line, restraining the San Pedro Co. and its associates from interfering with this old grade and its tunnels from Uvada about 40 miles southwesterly to a point called Clover Valley Junction, and thence by a branch to Pioche. (See Complainant's Exhibit 175-A, Folio 5333.) Later on, when the Oregon Short Line or its sub-company attempted to interfere with the work of the San Pedro at Clover Valley Junction and through the Meadow Valley Wash, to a point near the Nevada and California state line, it was likewise enjoined. (Exhibit 175-C, Folio 5339.) A suit was also brought in the state court of Nevada by the sub-company of the Short Line in May, 1901, to set aside a tax title covering this grade and these tunnels claimed to be owned by the San Pedro. (Complainant's Exhibit 176, Folios 5348 et seq.) An answer was filed in that suit, which appears as part of the same exhibit. (Folios 5379 et seq.) That cause was pending until after the settlement between the Short Line and the San Pedro roads in June, 1903, when the answer was withdrawn and judgment went in favor of the plaintiff, setting aside the tax title. (Folios 5392 et seq.)

Mr. Gibbon, who was the originator of the San Pedro road and its Vice-President and General Counsel for a long time, was asked when he first became associated with Senator Clark in the enterprise, and testified that he thought his first meeting with him was as early as 1899. Mr. Gibbon then said:

> "At that time I was vice president and general attorney of the Los Angeles Terminal Railway Company, which owned some railroad property in southern California and a line extending from Los Angeles to San Pedro Harbor and quite large holdings on the harbor at that place, in real estate. My stockholders, who were St. Louis people principally, had asked me long before that to do anything I could toward promoting a line of railroad to Salt Lake City which would connect with and use their terminals in Los Angeles and on the harbor and their lines in southern California. I had seen numbers of people in fact during a period of several years in the effort to promote the building of this line from Los Angeles to Salt Lake, to take over and use the terminal properties of these St. Louis people. These properties were held by a California corporation known as the Los Angeles Terminal Railway Company, which I had organized for them in 1891. In pursuing this effort to organize a corporation for that purpose and interest capital, I first brought the matter to the attention of Mr. Ross Clark, who resided in Los Angeles, and whose office adjoined mine in the building we had offices in. Knowing that he was looking for investments and that his brother was also a very wealthy man and looking for investments in Southern California, and had investments here, through Mr. Ross Clark the matter was brought to the attention of his brother, and through him, later on, I met Senator Clark, and we took up the matter of his becoming interested in a company which would build a line of railroad from Los Angeles to Salt Lake City,

> Utah, and would take over the properties owned by the St. Louis people or by the Los Angeles Terminal Railway Company, which the St. Louis people were the stockholders of." (Folio 5434.)

He further testified that by the autumn of 1900 the matter had taken such shape that Senator Clark had determined to take the leading part in organizing a proposed corporation to build the line of road. It was to first take over the properties of the Los Angeles Terminal Railway in California, the principal properties of which were terminals in the City of Los Angeles and on San Pedro Harbor, and to build a line of railroad from Los Angeles to Salt Lake City. The other gentlemen associated in this enterprise with Senator Clark and himself were Mr. Ross Clark, Mr. Kerens of St. Louis and his associates, who were interested in the Los Angeles Terminal Railway, and later, Senator Kearns of Salt Lake City and his partner, Mr Keith. (Folios 5435-6.) He also testified that he was authorized by his associates to apply to the City Council of Salt Lake to secure a concession for terminal purposes of what was known as Pioneer Square in that city, the same being a public common. He testified:

> "Q. Did you make any representations on behalf of your associates or yourself to the city council in connection with that application, as to the intention of your associates and yourself to construct an independent line of road?
>
> A. I did; I represented to the city council of the city of Salt Lake, and also to other parties there with whom I was brought in contact, prominent citizens, etc., that it was the intention of the people whom I represented, principally the gentlemen I have named, to organize a corporation for the purpose of constructing an independent line of rail-

road from the city of Salt Lake to the city of Los Angeles or between those two cities.

Q. By an independent line you mean one not affiliated with any other?

A. While it might be affiliated with others in traffic matters, yet not in any sense under the control of any existing line.

Q. And that was the intention of the promoters?

A. That was the intention of the promoters, as I understood it.

Q. The Southern Pacific Company was here at that time and had been for many years?

A. Oh, yes, certainly.

Q. And had a line of road leading up to Ogden?

A. Yes.

Q. Was it the intention of these gentlemen whom you have mentioned to build a line which should be a competing line with the Southern Pacific?

A. It was, as expressed by them and myself." (Folios 5436-7.)

A petition to the Mayor and City Council for the grant of that Square was presented on September 25, 1900. A copy of this petition will be found at Folios 4055 et seq., as Complainant's Exhibit 154. The defendant Clark, under date of October 2, 1900, presented to the Mayor and City Council of Salt Lake a petition urging the granting of the former petition, which was signed on behalf of the promoters of the line by Mr. Gibbon. (Folio 4058.) On October 23, 1900, a committee of the Council, to whom had been referred the said petition, reported that two public meetings had been held for its consideration, and they submitted a form of ordinance vacating the said tract as a park, which ordinance was adopted and approved by the Mayor on November 17, 1900. (Folios 4059-60.) Some question being raised about the authority of the City Council to grant the use of this tract at the instance of the pro-

moters represented by Mr. Gibbon, the Legislature of Utah passed Chapter 49 of the Laws of 1901, authorizing them to grant the use of such property, the same being qualified, however, by an amendment or proviso requiring the question to be submitted to a vote of the people. This act was approved March 14, 1901. See testimony of Love, and copy of the act, Folios 4062 to 4064. In securing the passage of this legislation it was again represented to the legislature that the road would be an independent road. (Love's testimony, Fol. 4065.)

After testifying to certain surveying done by the old Union Pacific Railroad Company, in 1890 or 1891, and to the securing of certain rights under an organization of which the old Union Pacific Co. was the beneficiary, Mr Gibbon testified:

> "About that time they were building—certainly were surveying down through Nevada, and about that time they built the line, I think south of Milford, and did some grading and tunnel work in the state of Nevada, which was intended to be used by that line that was projected to Los Angeles.
>
> Q. That was 1889 or 1890, according to the testimony, when the tunnel work was done in Nevada. After they did that work in Nevada, did the Union Pacific interests, so far as you know, make any move toward building a line to Los Angeles from Salt Lake until after your project was publicly announced?
>
> A. None that I know of, and I think I would be entirely safe in saying none. The Adams control of the Union Pacific went out at that time, and *we heard nothing about any further proposition to extend the line to Los Angeles until after we organized the San Pedro, Los Angeles & Salt Lake Railroad Company in 1901.*

Q. You mean the San Pedro, Los Angeles & Salt Lake Railroad men got their scheme under way?
* * *

A. I don't know that we heard anything about it until after the corporate organization was perfected. I don't now recall that we did. Possibly they had shown some disposition before that time, but it was about that time I will say. Certainly there was nothing heard about it until after the announcement was made that the present Los Angeles road would be organized." (Folios 5438-9.)

Mr. J. Ross Clark, who is the Vice-President of the San Pedro Co., said that his brother and himself bought a half interest in the Los Angeles Terminal Co. in July, 1900. (Folio 1034.)

After testifying to certain work that was done toward the construction of the line in the early part of 1901, he was asked whether at the time he started the surveys and did that work it was the intention of himself and his associates to build an independent line from Los Angeles and San Pedro through to Salt Lake City, and he said it was their intention to build a line of their own to be controlled by themselves. (Folios 1038-9.)

Mr. Kerr, now in railroad service, but for a long time the railroad editor of the Salt Lake Tribune, testified that he wrote an interview with Mr. Gibbon, published in the Salt Lake Tribune of September 17, 1900, which was a truthful statement of Mr. Gibbon's declarations to him. (Complainant's Exhibit 155, Folios 4137 et seq.) He said at Folio 4138 that Mr. Gibbon stated thus publicly that the line would be an independent line, and among other things said:

> "No other corporation has a dollar or will have a dollar in it and a new line will be built right through to Salt Lake. The money with which to build the line is all subscribed and the important things now to be accomplished are the organization of the company and the securing of franchises."

Mr. Kerr also testified that an interview with Mr. R. C. Kerens, which appears in the record, Complainant's Exhibit 156, Folios 4142 et seq., correctly stated what Mr. Kerens said to him for publication. This was published in the Salt Lake Tribune September 19, 1900. In this interview appears the following:

> "It will be an absolutely independent line, Mr. Kerens reiterates, and has no connection with any other corporation beyond the expected traffic arrangements which may be made in the future, or trackage rights in California which may be economical or necessary. The line itself, however, is to be operated and owned as an independent Salt Lake-Los Angeles line, and those two cities will be greatly benefited by its construction, as Southern California is the Mecca for tourists, and San Pedro is the coming port on the Pacific."

He also testified that Complainant's Exhibit 158, Folios 4148 et seq., was a truthful report of the statements made and a speech delivered by the defendant W. A. Clark, published in the Salt Lake Tribune, October 3, 1900. At Folios 4149-52 it will be seen that defendant Clark said that the railroad would be built within two years, and "it will be an independent line in every way, and will be built by the most direct route." In the course of his remarks Senator Clark made the following pregnant statement:

"Less than 800 miles away as the bird flies, yet more than 1,500 by any rapid means of communication, lies another city, neat as a new pin and beautiful as a flower, Los Angeles, the metropolis of southern California. In many respects these two cities are similar, but have resources of a different character. Although so near they are comparatively strangers to each other. They are separated by a narrow strip of arid waste whose desolation and silence the *strong arm of monopoly* has not hitherto permitted to be broken by the whistle of the iron horse. This should no longer be. The time has come when these two people, looking over the intervening desert, should stretch out their arms in friendly greeting, one to the other, and say, we will join you and break down the barrier that has so long separated us and hereafter form forces in the march of progress and destiny. When this takes place the Los Angeles and Salt Lake Railway will be an assured fact."

In view of subsequent events, this bold defiance of monopoly by the defendant Clark, seems highly amusing. In the same speech, Senator Clark, at Folios 4154-5, calls attention to the splendid harbor of San Pedro, upon which the Government is spending millions of dollars, and that that result was obtained after a struggle for many years between San Pedro and Santa Monica, mainly through the influence of his friend and colleague, Mr. Gibbon; and he pointed out the possibility of commerce with foreign ports which might assume proportions of great magnitude. This is also an interesting statement in view of the fact, as will be seen by further testimony, that the San Pedro Company has not been permitted to enter into any arrangements with steamship lines in competition with the Pacific Mail and its allies, although the opportunity was offered to do so.

Senator Kearns of Salt Lake, still a director of the San Pedro road, testified (Folio 4229):

> "Q. When that road was projected by Senator Clark and his associates, and when this corporation was organized, was it the intention of you gentlemen who were associated together to build it as an independent line of road?
>
> A. That was my understanding, yes, sir."

After testifying that he had procured for the use of his company some old surveys from Salt Lake in a southwesterly direction towards Los Angeles, and that engineers were immediately put to work, among whom he mentions Mr. McCartney (Folios 4229-30), he testified at Folio 4231:

> "Q. At the time you procured this survey, Senator Kearns, had you any knowledge that the Oregon Short Line were contemplating building a line down there? Had they done anything publicly to indicate it?
>
> A. At that time my attention was not called to it and I didn't know anything to that effect, no.
>
> Q. You didn't know of anything of the kind, if they had any such intention?
>
> A. No, sir."

There can be no doubt that this testimony shows clearly that the San Pedro road was projected as an independent line in which no other railroad corporation should be interested, and that it was proposed by Senator Clark and his associates to break up the monopoly that had so long existed in connection with traffic between Salt Lake and Los Angeles.

TESTIMONY AS TO CONSTRUCTION WORK BY SAN PEDRO AND EFFORTS OF OREGON SHORT LINE TO PREVENT THE SAME, INCLUDING PARALLELING OF LINE.

Mr. McCartney, a civil engineer, testified that he had had to do with the survey of what is now the San Pedro road, under three different companies, the first survey being in 1889 and 1890, from Milford, Utah, to the Nevada-California state line. This work was done for the Oregon Short Line and Utah Northern Railway Company. Construction was started about January 1, 1890, and continued until October 14, 1890. During that time the greater portion of 115 miles from Milford, Utah, to Caliente, Nevada, was graded, and 73¼ miles of track was laid. In addition to the grading from Milford to Caliente a 30-mile branch from Caliente to Pioche, Nevada, was partially graded, but no track was laid. October 14, 1890, work was stopped and the 73¼ miles of track was subsequently pulled up. (Folios 4957-8.) Mr. McCartney testified that he next saw the grade in 1896, when he went over the whole of the 115 miles to Caliente and the greater portion of the branch. He was then in the employ as chief engineer of a corporation called the Utah & California Railroad Co., organized to build a road from Utah to California. Of this road, Mr. George Q. Cannon, of Salt Lake, was the President, and various other citizens of that city were officers and directors. The first thing he did after being appointed chief engineer of that company was to go to Omaha and interview the receivers of the Union Pacific, and request their notes and maps, and he also desired to find out whether the receivers were friendly to the enterprise inaugurated by these gentlemen in Salt Lake. They expressed themselves as favorable, and the chief engineer of the Union Pa-

cific was instructed to furnish Mr. McCartney with copies of all maps, profiles and notes. These papers were paid for by the Utah & California Railway. A survey party was organized, and the survey was made over this old grade, but in August, 1896, the enterprise was abandoned. (Folios 4958-60.) On March 26, 1901, under the employ af Mr. J. Ross Clark and Mr. Whittemore, an attorney of the San Pedro road, he started to survey from the point where the old grade crossed the Utah-Nevada line, about 75 miles from Milford. Previous to that he had done some work in connection with the old surveys and papers, his work beginning about January 1st. The survey reached Caliente April 2nd, and then turned by the old grade toward Pioche, reaching the head of Condor Canyon in the open country on April 7th. On April 8th he started a survey down the Meadow Valley from Caliente, there being no grading at that time south of Caliente. The survey was continued until July 10th, when it reached the Nevada-California state line. Construction work was started along the old survey. The Oregon Short Line contested the right of the San Pedro road, and secured a decision in its favor in the court at Carson City, Nevada. *Mr. McCartney was then ordered to make a survey through some other pass, so as to get over the rim of the Salt Lake basin without touching any of the old grade, and a line was located through a pass called Miller's Springs, but little grading was done on that line, and all of it in the vicinity of Caliente. This new line was termed by Mr. McCartney a side hill line as against a drainage line.* After the location of the line from Caliente southward down the Meadow Valley, construction work was commenced at Caliente on May 6, 1901. On May 14th, another camp was put in fourteen miles south of Caliente, and May 23rd a contract for sixty

miles southward from Caliente was let to Deal & Mendenhall, contractors, and their forces were scattered at various places over this 60 miles. This work was stopped November 9, 1901. It consisted of grading, no trestles having been built, and no track laid. November 5th to 7th there was a conference at Salt Lake between the representatives of the Oregon Short Line and the San Pedro road, at which it was agreed that a joint survey might be made through the Meadow Valley Canyon, so that each company should peaceably build its own line, the agreement being that the lines should be located not less than twenty feet apart. This joint survey was completed in the spring of 1902, and later in that year Mr. McCartney received orders to disregard both the lines and put in a final location on the best line the country afforded. That was done, and a grading contract was let, the line was graded and the track laid. (Folios 4962-5.) These two surveys were made not only through the canyon, but clear across the desert to the vicinity of the California line. (Folios 4965-6.) Mr. McCartney testified that his recollection was that the San Pedro Company up to the time work was stopped in November, 1901, had spent in the neighborhood of $100,000 on grading work under the Deal & Mendenhall contract. (Folio 4967.) *During the time that the surveying work was going on in Nevada, a line was also being surveyed out of Salt Lake City, to come down and connect at Modena, Utah, with the line designated as the side hill line.* (Folio 4968.) ***At the time Mr. McCartney started surveying on March 26th, the Short Line had no surveyors at work, and he did not see any until May, when he saw them in the Meadow Valley below Caliente.*** The road from Milford to Uvada, built by Mr. Eccles and his associates, was still run by these gentlemen independently. The Short Line did not take it

over until April 9, 1901, as we have shown. In surveying the line from Caliente southwesterly, Mr. McCartney paid no attention to the old survey of 1890. (Folio 4984.)

Mr. Whittemore also testified that a line of location was made from Salt Lake southwesterly for a considerable distance, and *also said that the line surveyed down to Caliente, while a more expensive construction than the old grade of the Oregon Short Line, avoided all tunnels; that it was a feasible route; in fact, a better route than the other.* (Folio 5345.) On cross-examination, Mr. Whittemore testified that he was employed by the promoters of the Salt Lake road somewhere along in September, 1900; that he procured the rights of the Utah & California Co., which had filed maps and profiles under the act of March, 1875, in the land office at Carson City. (Folio 5399.) He also detailed the litigation between the Utah & California, which was controlled by the San Pedro promoters, and the Utah, Nevada & California Co., controlled by the Short Line from March 11, 1901, on for several months. (Folios 5401 et seq.) On April 5, 1901, he was advised by wire that a decision of the local land office had been rendered in favor of the San Pedro as to the old grade, and he thereupon went down to Uvada at once, expecting the Short Line people would be on hand. He took possession of the grade with men and teams. The Short Line moved down on them with ties and material, and for some time the San Pedro people were resisting the construction in various ways, claiming to be in possession under the Utah & California, and the Short Line claiming the possession and occupying it by laying tracks. (Folios 5415-17.) A large amount of right of way had been secured over land owned by private individuals, by the San Pedro road southwesterly from Caliente, as shown

by the affidavit of Mr. Bracken, (Complainant's Exhibit 174, Folios 5321 et seq.), which by stipulation was received as proof of the facts therein stated. Mr. Whittemore testified to the acquisition of these rights of way through the Meadow Valley Wash southwest from Caliente, and that they had started the construction of a grade from Caliente running southwesterly for some distance, and placed a barricade at the dividing line between this new grade and the old grade leading down to Caliente from Uvada, which had been in dispute between the Short Line and the San Pedro roads. The Short Line in the meantime was laying rail on this old grade, and when they reached this barricade, they ran their track-laying machine through it, and started to lay track on the grade that had been constructed by the San Pedro. Thereupon affidavits were submitted to the United States Circuit Court in Nevada in the same suit in which the San Pedro had been enjoined from interfering with the Short Line's possession of the old grade, and an injunction was granted to the San Pedro restraining the Short Line or its sub-company from interfering with it in the location or construction of its railroad from the point where this new grade commenced through the Meadow Valley Wash to the Nevada-California line. (Folios 5330-31.)

This injunction was obtained on the 9th of August, 1901, and at that time surveying crews of the San Pedro were at work in the field. After obtaining this injunction, the work of constructing grades and completing the location of the line of railroad into California was proceeded with by the San Pedro Co., and the work of the Utah, Nevada & California below Caliente was suspended. (Whittemore, Folio 5343.) At this time the San Pedro had invested a large sum of money in the enterprise, as appears by the

testimony of J. Ross Clark. Mr. Clark was examined (Folios 5424 et seq.) with reference to the facts stated in an affidavit that he had made in June, 1901, to be used in the suit in the federal court at Carson City, and, as will be seen, he reaffirmed all the facts stated in said affidavit. From this testimony it appears that there had been paid in to the corporation at that time $2,501,600; that the authorized capital stock was twenty-five millions, which was finally issued; that the corporation had acquired terminal railroads at San Pedro and Los Angeles, and also secured lands for terminal facilities in the City of Los Angeles aggregating about 100 acres in extent. Mr. Clark testified that they had paid about $100,000 for those terminals. (Folios 5424-5.) He also testified that the Los Angeles Terminal Railway property at San Pedro included about 1,200 acres of land, 100 acres of it on the shores of San Pedro Bay, with three miles of water front, giving the corporation much the largest harbor water front on the harbor of San Pedro. (Folio 5426.) They had also expended then more than $500,000 in cash in buying rails, cars, steam shovel, right of way in Los Angeles and between Los Angeles and Riverside, and had contracted for about 8,000 tons of steel rails, some of which had been delivered. (Folios 5426-7.) That the company had adopted plans and specifications for laying a main track line between Salt Lake City and the Bay of San Pedro, of rails to weigh not less than 75 pounds per yard, upon a thoroughly well ballasted track, so that its line when completed, would make and constitute a high-speed through line between Salt Lake and the Bay of San Pedro, and that the plans and specifications so adopted would result in the corporation, when its line was completed, operating the best

constructed line of railroad west of the Rocky Mountains. Mr. Clark testified with reference to such plans:

> "Q. Did those plans and specifications which you mention in your affidavit contemplate a through line to be constructed by you to Salt Lake City?
> A. I think so."

He further said that the corporation had surveyed 110 miles of its proposed main line extending from the city of Los Angeles toward the city of Salt Lake, had definitely located 90 miles of the same, had secured nearly all the right of way for 30 miles thereof, extending from the city of Los Angeles eastward toward Salt Lake, and was then engaged in securing said right of way with all convenient dispatch, and would continue the work of securing the same. The 90 miles reached about to the summit of Cajon Pass. (Folios 5427-28.) He further stated in said affidavit, and testified that the corporation had purchased 50 ballast cars, one steam shovel, an unloader, and in addition several hundred freight cars, and had actually begun the work of construction upon the new portion of its main line extending between the city of Los Angeles and the city of Salt Lake, and proposed to continue the construction of the same as fast as the said line was located and the right of way therefor secured, and that it had also ordered 300,000 ties, a large number of which had been delivered, and was engaged in placing almost daily orders for material and equipment for its proposed line of road; that the surveyors of the corporation since the same was organized and up to the 21st of June, 1901, the date of the affidavit, had surveyed about 140 miles of the line west from Salt Lake City, and extending through a portion of Lincoln County, Nevada, and that the said corporation had in the

field actively engaged in carrying out the work of surveying and locating its proposed line, four complete surveying parties. (Folio 5429.) Then follows this very significant statement, which Mr. Clark said was true:

> "That the stockholders of said corporation are men of large means, and affiant says that he verily believes that they have all entered upon the organization of the prosecution of the purposes for which said corporation was organized in good faith and with an honest intention of completing the acquisition and construction of the said main line of railroad and the branch lines thereof which the said articles of incorporation authorize the said corporation to acquire, construct and operate."

He further said that as second vice president of the corporation he had been put in immediate charge and supervision of the work of acquiring, constructing, and equipping the lines of railway which the said corporation was organized to acquire, construct and equip, and therefore had intimate and thorough knowledge of the matters and things contained in the affidavit. (Folio 5430.) From this testimony it appears that the San Pedro road was, even in June, 1901, very far from a paper corporation, but that it was being actively constructed, large sums of money had already been expended and wealthy men were behind the enterprise with the intention of constructing this proposed independent competing line.

Mr. Moore, a civil engineer of Salt Lake, testified that he was employed as locating engineer of the San Pedro; that he was engaged early in 1901; that he began work at Uvada, and worked south through the canyons and the Meadow Valley Wash toward the California state line,

and then returned to Salt Lake, and conducted a series of surveys from that city to Modena and the state line; that those surveys connected with the survey made from Uvada down, practically at Modena, which is 276 miles from Salt Lake. A portion of that distance, there was only one line surveyed, and further on two or three experimental lines. The survey from Modena to Salt Lake was finished the latter part of 1901; that there were several parties of engineers at work surveying toward California, or coming from California, all under the personal charge of Mr. Moore. This work was under way when he came to the road in 1901, and those surveying parties reached a point of connection with the surveys made under his direction, so that there was a complete line finished through in 1902. (Folios 4253-54.) Mr. Moore further testified that shortly after he went to work below Uvada, the Short Line construction and track-laying parties appeared there, and the Clark interests had grading outfits below Uvada arriving there about the same time that he did with his surveyors. He was asked what was done by the respective gangs of the two companies, and testified:

> "A. So far as I observed, the Oregon Short Line were pushing their track forward and we were doing what we could to prevent their coming on, and were gradually falling back until the track reached Caliente."

The San Pedro Co.'s graders were working further down on new work. He further states that barricades were put in the tunnels and wire fences were erected by his people and taken down by the Short Line people, and there was some gun play, although no one was hurt, and there were sheriffs of two states at Uvada, and county attorneys, and

that this kind of trouble lasted for a couple of months. (Folios 4256-7.) The surveying work was mostly ahead of this trouble, projecting new lines down the Meadow Valley Wash. It will be remembered that the old grade, which was claimed by both parties, ended at the head of the Meadow Valley Wash at Caliente. Finally a truce was arrived at, and a joint survey was made Mr. Moore testified:

> *"We received instructions to go on jointly and locate a line under certain conditions which were fixed in an order from Carson City. The old surveys crossed and re-crossed a good many times, but the survey which was conducted jointly was at no point nearer than twenty feet from center to center of the track, and did not cross in any case."*

Mr. Moore further testified that those two lines so run *were feasible routes through the canyon, although expensive, but they could have been constructed.* (Folio 4258.) The single line finally adopted after the amalgamation followed the original survey in a general way.

On cross-examination, Mr. Moore testified that the line from Salt Lake to Caliente surveyed by the San Pedro people, which did not infringe upon the right of way claimed by the Short Line out of Caliente, was twelve miles shorter than the Short Line, and while there was a greater rise and fall in grade, there were no tunnels, and the maximum grade was one per cent. (Folio 4264.)

Senator Kearns testified that on one occasion previous to the amalgamation he went down to Caliente, and at that time both the Short Line people and the San Pedro people had gangs of men down there at work building a railroad; that there was considerable grading; he didn't know just

how much, but it was visible below Caliente in the Meadow Valley Wash. (Folios 4232-3.)

Mr. Gibbon, in his testimony before the Interstate Commerce Commission, which by stipulation is made part of this record, testified quite fully with reference to the warfare between the San Pedro and the Oregon Short Line companies at Folios 1155 et seq. (There is a misprint in this testimony at Folio 1159 in two places, where he spoke of the Nevada-Utah state line. It appears in the record as the Nevada-*California* state line.) After detailing the construction of the old grade back in 1890 or 1891 by the then Union Pacific interests, he testified that after the San Pedro was organized, it became a race as to who should be possessed of that grade and the tunnels and also the right of way which had previously been surveyed by the subsidiary company of the Union Pacific ten or eleven years before. The right of way had been sold for taxes; the San Pedro secured the tax title. The Short Line secured what rights there were, if any, in the old company that had originally surveyed through the Meadow Valley Wash; the San Pedro secured a right of way from private parties, each side secured everything in the nature of legal rights that they could; both went in with construction forces, and they came very near having bloodshed. There were some clashes that might have been very serious. Finally each side secured certain injunctions. After they were obtained Judge Kelly, then counsel of the Union Pacific, and Mr. Gibbon had a conversation in court, in which they agreed that whichever party won under the United States law with reference to the occupancy of canyons, the other side could force its way through, but it would result in the first line being crossed a number of times. Therefore they agreed

on a written stipulation providing for the joint survey to locate two lines. And those surveying parties went to work; but pending the final conclusion of that work and the vesting of the title in each of the contesting companies' interests, the arrangement was made which resulted in the joining of the two interests and the building of the one line of road. (Folios 1161-4.) At the time this stipulation for the two surveys was made it was still the intention of the San Pedro people to build a line through to Los Angeles from Salt Lake, and at that time, his associates were led to believe that the Oregon Short Line interests also intended to build a through line, and the result would have been, if there had not been an amalgamation, that two lines of road would have been built through. (Folio 1164.)

UNION PACIFIC SECURES HALF INTEREST IN THE SAN PEDRO WITH TRAFFIC AND OTHER AGREEMENTS RENDERING IT PRACTICALLY A SUBSIDIARY.

Mr. Gibbon testified that at the time the scheme of building the San Pedro road was inaugurated, they expected to depend chiefly on through business, and to handle business both in connection with the Rio Grande Western and the Union Pacific, but the expectation of doing business closely with the Union Pacific was destroyed, for the reason that it appeared to them that any interests that were interested in the Southern Pacific would have to build a line for the protection of the business that had been going, before that time, through the Sacramento gateway for southern California. (Folio 1166.)

Mr. Gibbon further testified:

> "Q. At the time you initiated the road, you expected to have the two connections; that is, you hoped to have them?
>
> A. Yes, sir.
>
> Q. You did not learn that you would be compelled to make your connections solely with the Rio Grande, or work solely with the Rio Grande, until the Oregon Short Line had waked up and commenced to try to get possession of this old grade, did you?
>
> A. Well, we probably did not have the matter brought to our attention, that what we had hoped would be a connection would probably be a rival." (Folio 1167.)

This testimony bears out the suggestion above made, that the construction of this line was something not contemplated by the Union Pacific until the conspiracy was inaugurated which had its first step in the acquisition of the

Southern Pacific, and the Union Pacific having become interested in the Southern Pacific, projected this line to protect the Southern Pacific and the traffic that had been going over that line by the Sacramento gateway. The result was the usual one, namely, a consolidation and combination; the late defendant Harriman, the Union Pacific Railroad Co. and their associates, made it clear that the second line would be built, and the San Pedro road possibly rendered unprofitable. Mr. Gibbon, when asked who initiated the negotiations leading up to the contract of July 9th, 1902, attached to the petition herein as Exhibit A, said that it was a mutual thing—the outgrowth of the negotiations with reference to running the two lines through the canyon. Senator Kearns, still a director of the San Pedro, said that he was present on one occasion with Mr. Kelly, then representing the Union Pacific, Mr. Gibbon, and Mr. Bancroft in New York, but he had most of his conferences with Mr. Clark, who acted in the negotiations through Mr. Gibbon as solicitor. The negotiations lasted during a period of several months. When the negotiations were opened, Kearns approached Senator Clark to urge him to make terms. He then testified as follows:

> "Q. What was Senator Clark's attitude when you approached him and urged him to make the deal?
>
> A. He was not at all anxious at that time.
>
> Q. How long before he became anxious, or did he ever become anxious?
>
> A. He said he wanted to go along a while yet. I told him that he had a good deal more money than his associates, or at least I thought he had. * * * From a financial standpoint it didn't appear to me that there was anything left to be done, only to put one—

Q. You felt satisfied, did you, that if two lines were built through to Los Angeles, they could not be financially successful?

A. I didn't care to put any more of my finances into it—my small pile." (Folios 4234-5.)

He further testified:

"Q. When you went into this enterprise with Mr. Clark and others, you did not share in the feeling that you afterward had, that the line would not be profitable, did you?

A. No, sir; I wouldn't have gone into it if I had.

Q. No; that is what I thought. You didn't do it for your health?

A. No, not exactly.

Q. You were feeling well?

A. Yes." (Folio 4237.)

* * * * * *

Q. You felt that two lines through there would be not only expensive to construct but also to maintain and operate?

A. Well, I didn't want it with my money.

* * * * * *

Q. Then it became necessary for you to consider whether you wanted to build a line of railroad practically from Los Angeles through to Salt Lake, practically parallel, and certainly parallel and competitive as to every bit of business it would carry?

A. At that stage in the proceedings, when they began to parallel each other, I knew what it meant from a financial standpoint, yes; and I considered, with many of them, selfishly, that it was ruination to me if I continued, or with the interest I had in there, not to me personally, and I so prevailed on my associates." (Folios 4245-47.)

J. Ross Clark testified that the negotiations resulting in the contract Exhibit A lasted several months, and he does not know which side initiated them. (Folio 1041.) Up to

the time that these negotiations were commenced, Mr. Harriman or his companies had no interest whatever in the San Pedro road. (Folio 1042.)

When the consolidation of the interests took place the Short Line put in its old line from Salt Lake City to Uvada. The testimony makes it very clear that the Union Pacific had not intended it as a part of a trunk line. Mr. Moore testified that he was with the road until about the time it was completed; that he re-located about 75 miles of the line between Salt Lake and Uvada, which was taken over from the Short Line at the time of the amalgamation; that the rails on that line were only 52 pounds, and had to be taken out and 75-pound rails substituted. The grades had to be broadened, as the old roadbed could not sustain the ballast that had to be put on; that previously it was only ballasted with natural earth from along the line; when reconstructed it was ballasted for the most part with rock ballast. (Folios 4259-60.) The whole thing was very well summed up by the testimony of Mr. Whittemore at Folio 5423:

> "Q. Well, the fact is that you had two very lively, energetic railroad companies at work constructing lines from Utah to California, hadn't you?
>
> A. For a while, yes.
>
> Q. And after they had proceeded for a time with that construction they were amalgamated into one company?
>
> A. Yes."

We have thus detailed at length the foregoing facts showing that the Clark road was initiated and proclaimed to the world as an independent enterprise; that it was particularly a competitor of the Southern Pacific; that no other line of road was to have any proprietary interest in it; that the

Oregon Short Line and its predecessors for eleven or twelve years, had made no move whatever to build to Los Angeles; that although the road was projected in 1900 and steps taken to procure terminals in Salt Lake, nothing was done toward constructing the Short Line until after the acquisition of the Southern Pacific by the Union Pacific; that the latter company, for the purpose of completing its monopoly, proposed to wreck the independent enterprise or force it to terms. If the San Pedro road had been in the hands of men of less financial responsibility, who could not have raised money to build the line through, it is practically certain that after throttling the enterprise, preventing the construction of the road, the Union Pacific would have stopped at the end of the old grade in Nevada, but Senator Clark and his associates were men of such vast wealth that it was not possible to prevent the line from being built. Therefore defendants did the next best thing from the standpoint of this conspiracy to monopolize the traffic of the west, and consolidated the two lines in process of construction into one line under agreements tying the Clark road hand and foot, preventing future competition and making it part of the Union Pacific system. The contracts were of such an astounding character that Senator Clark and his associates, if they were going to pretend to any semblance of independence, could not have consented to them. As a matter of fact, the net result is that the Clark people were permitted to own one-half the stock, finance one-half the enterprise, and occupy some official positions in the road to save their faces, while the Union Pacific gobbled up the line.

THE CLARK-HARRIMAN AGREEMENT EXHIBIT A.

JULY 9, 1902.

This agreement, which is attached to the petition, as will be seen, provides in substance for the sale by Clark, representing himself and his associates to Harriman as trustee, of an undivided half interest in the San Pedro enterprise, as represented by the stock of that company, of a construction company and certain terminal companies; that the shares of stock so sold to Harriman, together with those remaining in the possession of Clark and associates, were to be trusteed for a period of ten years after the opening of business of the San Pedro road, during which period neither party should in any manner dispose of his interest in the said stock without the consent of the other party, nor dispose of the same *at any* time without giving the other party the right to purchase such holdings so offered for sale on as favorable terms as the same were offered for sale or agreed to be sold to any other person or company. (Article 1 of Exhibit A, pages 28 et seq.) So that not only were Clark and his associates absolutely prevented from selling any interest for ten years, but they were compelled to sell to the Short Line or Harriman at any time thereafter. As Senator Clark represented not only himself but his associates, and as it is inconceivable that all of the said associates or even Clark himself, would desire to perpetually retain this stock, it was an inevitable result from this agreement that the Short Line would at a very early date be possessed of not simply one-half, but of a majority or the whole of the stock of the San Pedro Co.

Exhibit B, attached to the petition at pages 88 et seq., is a stock trust agreement entered into on the 7th of June.

1903, between Clark, representing himself and his associates, Harriman as trustee, and the Farmers Loan & Trust Co., the depository of the stock. This provides by Article 4, pages 52, 53, for certificates of interest to be issued against all the shares of stock of the company deposited with the trustee, and endorsed upon the same there is to be a form of assignment, but it is expressly provided that no such assignment shall become effectual to pass any title to or right or interest in the certificate or in the shares of capital stock upon which it is based, until there shall have been endorsed in writing thereon a consent to the assignment signed by both Clark and Harriman. Thus no associate of Senator Clark can dispose of his interest without the consent of Harriman or his successor, and of course, if such assignment is attempted, Harriman or his successor would insist, under the terms of the contract, on the right to purchase.

Article 5, at pages 55 and 56, insures that the directors shall be divided equally between the two parties. Thus any independent action of the San Pedro road is prevented. A stipulation appears at Folio 5649, that the Empire Construction Co., the Los Angeles Terminal Land Co., and the California Improvement Co., the stock of which companies was also the subject of said agreement, have been wound up and dissolved. Thus the Union Pacific has absolute control of the situation. No changes can be made, and no extensions without its consent, and it is a matter of a very short time until it will actually be the owner of a majority of the stock. But as though that was not sufficient, the San Pedro Co. is tied up by traffic agreements and contracts. That the defendants were afraid that this arrangement might be attacked and the consummation thereof prevented before the road was completed, the said agreement being so con-

trary to the loud declarations of the projectors of the San Pedro road, is shown by the provisions of Section 6 of Article 1, Exhibit A, appearing at page 32 of the petition. This section provides that upon the completion of the sale and purchase of the undivided half interest in the stock by Harriman, Clark, trustee, will, whenever requested, cause one-half of the membership of the directorate to be vacated, and will cause directors to be nominated and named by Harriman, to be elected to the directorate to fill such vacancies. Then follows this extraordinary language:

> "Said Harriman, trustee, appreciating the advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end disturbing as little as may be the present organization of said company until the through line of said San Pedro Company in this agreement mentioned is completed and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents." (Folios 166-167.)

This agreement will have a familiar sound to this court, which has lately in the Standard Oil and Tobacco cases had under consideration stipulations under which competitors have been silenced and the fact has been for a time kept from the knowledge of the public. At Folio 8243 there is a stipulation that Robert S. Lovett, Trustee, has been substituted for the late defendant Edward H. Harriman under said Exhibit B.

TRAFFIC AND OTHER AGREEMENTS ELIMINATING COMPETITION BETWEEN THE UNION PACIFIC SYSTEM AND THE SAN PEDRO.

Pursuant to the foregoing contract, various agreements were entered into in 1903, approved by the stockholders of the Oregon Short Line at a meeting on October 14th, 1903. (Record, Folios 152-3.) These agreements will be found in the record at Folios 220 et seq., and are as follows:

Complainant's Exhibit 32, Traffic Agreement between the Oregon Short Line, San Pedro, and the Union Pacific. (Folios 220 to 249.)

Complainant's Exhibit 33, Traffic Agreement between the Southern Pacific and the San Pedro. (Folios 250 to 254.)

Complainant's Exhibit 34, a Deed from the Short Line to the San Pedro for a portion of the lines in southern Utah. (Folios 255 to 259.)

Complainant's Exhibit 35, a Guaranty of the Union Pacific to release the lien of certain bonds on lines taken over by the San Pedro. (Folios 260-262.)

Complainant's Exhibit 36, a Lease of certain tracks in southern California from the Southern Pacific Co. and the Southern Pacific Railroad Co., to the San Pedro, said tracks running from Riverside to San Bernardino, and being a part of the present through line. (Folios 263-282.)

Complainant's Exhibit 37, a Deed of certain lines south of Salt Lake City from the Oregon Short Line to the San Pedro. (Folios 283 to 294.)

Complainant's Exhibit 38, a Deed of what is known as the Terminus Branch, Oregon Short Line to the San Pedro. (Folios 295 to 301.)

Complainant's Exhibit 39, the Salt Lake Yard contract between the Short Line and the San Pedro. (Folios 302 to 333.)

Complainant's Exhibit 40, Deed of the Utah & Pacific, which was the line constructed by Mr. Eccles and associates to the San Pedro. (Folios 334 to 338.)

Complainant's Exhibit 41, a Deed from the Utah, Nevada & California Railroad Co. to the San Pedro Co., the grantor being the company building the line in Nevada which was the subject of so much controversy. (Folios 339 to 343.)

Complainant's Exhibit 42, Deed of the New East Tintic Railway Co. to the San Pedro, the grantor being the owner of a branch line in Southern Utah. (Folios 344 to 348.)

There are some provisions in certain of these instruments, to which particular attention should be called.

Agreements Between San Pedro and Short Line Not to Invade Each Other's Territory for Ninety-nine Years.

First, as to Complainant's Exhibit 32, the Traffic Contract between the Short Line, the Union Pacific and the San Pedro. It will be seen by Article 1, Folio 224, that the agreement is binding for ninety-nine years. By Article 2, Folio 226, a dead line was drawn at Salt Lake. During the ninety-nine years, the San Pedro Co. agreed by Section 1 of Article 2, that it would not extend its main line of road or any of its branch lines of road, nor construct nor build any lines of road nor aid any other company in the construction or building of any line of road, nor assist nor advise in the building or construction of any other railroad northward from Salt Lake City, or which may run into the territory northward of the parallel of Salt Lake City. Salt Lake City, as appears by the agreement, is the southern terminus

of the Oregon Short Line. Therefore, the San Pedro Co. absolutely agreed for ninety-nine years that it would not invade the territory of the Short Line directly or indirectly, even to the extent of advising the building of a line into that territory. Section 2 provides that no branch of the San Pedro Co.'s road south of Salt Lake City shall be built which shall directly or indirectly invade the territory of the Short Line Co. north of Salt Lake City nor be built for the purpose of diverting business naturally tributary to the Short Line Co.'s road or roads, north of Salt Lake City, and the Short Line Co. on its part agreed that it would not build any branch lines which would invade the territory of the San Pedro Co. south of Salt Lake City, or divert business which would be naturally tributary to the San Pedro Co.'s road south of Salt Lake City. The Articles of Incorporation of the San Pedro will be found in the record, Complainant's Exhibit 203, Folios 5651, et seq. It will be observed that by Article 5, it is contemplated that without limitation all necessary and appropriate branch lines and extensions of said line through the state of Utah and the other states through which the road was to run, were in contemplation, but the exercise of this franchise to build branch lines is attempted to be qualified and lopped off as to any lines into territory competitive with the Short Line by this traffic agreement.

Section 3 provides that the Short Line Co. will not build or construct any railroad or branch lines of railroad or aid any other company or companies in the construction of any railroad which will in any manner directly or indirectly enter into or invade the territory south of Salt Lake City, or south of the parallel thereof, or so as to in any manner invade or encroach upon the territory or which will be built or operated for the purpose or with the effect of di-

verting business naturally tributary to said San Pedro Co.'s road south of Salt Lake City or business originating at or delivered to points located in territory south of Salt Lake City. The Short Line by some chance is not prohibited from advising the construction of any such lines. Why that was eliminated from the Short Line stipulation and included in that of the San Pedro, does not appear, but it is, of course, immaterial. Therefore, by Article 2, there is a ninety-nine year division of territory, by two corporations, both of which are engaged in interstate commerce, the chief part of the business of both being interstate commerce.

Article 4 (Folios 230 et seq.), provides for through passenger train service over the Union Pacific from Council Bluffs to Ogden, thence over the Short Line to Salt Lake, and thence by the San Pedro road to Los Angeles or San Pedro; also through passenger service over the Short Line and the San Pedro; also through freight service in through freight trains. By section 2 of this article (Folio 233), it was agreed that the traffic taken up or laid down on the lines of the San Pedro Co. in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of the Short Line, the Union Pacific, and their connections shall be forwarded exclusively in so far as it may be lawfully done by way of and over the lines of the Short Line and the Union Pacific, and the Short Line and the Union Pacific agree to solicit the transportation of traffic to or from points in Utah reached by the roads of the San Pedro exclusively in connection with the San Pedro as against any and all of the San Pedro Co.'s competitors. It was further agreed in the same section at Folios 235-6, that the roads owned by the San Pedro, and the roads of the Short Line and the Union Pacific shall be treated as forming a through line of

transportation between points in California on the San Pedro Co.'s roads and points north of the city of Ogden on or to be reached by way of the Short Line and the Union Pacific, and their connecting railroad lines; and it is further agreed that so far as may be lawfully and profitably done, that said through lines shall be operated and worked as a unit with respect to the traffic which is in whole or in part the subject of competition by other carriers, and that the parties shall, so far as they lawfully may, promote the interests of the through line against any other line competing in whole or in part for the same traffic. This, it appears, very effectually ties up the San Pedro, but the Union Pacific at all times having in view its interest in the Southern Pacific, which is another branch of its system, put in a provision that the obligation of preference is not to be understood or construed as requiring either party to refuse or neglect to receive and properly forward any traffic offered for transportation by other connecting carriers. (Folio 236.) And by Section 4 this whole provision, in so far as it affects the obligations of the Union Pacific or the Short Line, is rendered nugatory by putting in the contract the following language:

"Nothing in this agreement shall be construed as limiting the rights or privileges or the practices of the Union Company or of the said Short Line Company, and each of them, in respect to interchange of traffic each with the other, and each with the Southern Pacific Company, as fully as before this agreement was made." Therefore the substance of this agreement, in so far as we have considered it, is that the San Pedro Company is bound to work with the Union Pacific, treating its line, that of the Short Line and the Union Pacific as a through line, and preferably promote the interests of that line as against all competitors,

while the Union Pacific and the Short Line on their part are relieved from that obligation in so far as the interchange of business with the Southern Pacific, which is the natural competitor of the San Pedro, is concerned.

Section 6 of this article (Folio 238), again shows that the San Pedro is regarded as substantially a branch of the Union Pacific. That section provides that the Short Line Company and its connections, the said Union Pacific, and each of them, shall have the right to name and make the through rates between points (that is, in both directions), on or reached via their respective lines, and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Co. or said Union Co. might give to or receive from said San Pedro Co. in competition with any and all other connections of said San Pedro Co., the only proviso being that upon demand of the San Pedro Co., the Short Line and Union Co. shall meet the rates offered by a competing line for such business. That provision, it will be seen, deprives the San Pedro of all independence of action on all of its lines in Utah, on the traffic to and from the east or the north, which can be reached over the Short Line or the Union Pacific or both of them in connection. The rate-making power is taken away from the San Pedro and given over to the Union Pacific system. The San Pedro connects with the Denver & Rio Grande at Provo, and it interchanges business to some extent at that point with that line, but it cannot put in an independent rate. It is not only prohibited from taking the initiative in putting in a rate, but if the Rio Grande should offer to put in a lower rate, the Short Line and the Union Pacific would meet it, and then the business would have to be handled under the other provisions of the agreement, over the Union Pacific.

Section 9 (Folio 239), prohibits the San Pedro Co. from at any time interchanging traffic with any carrier connecting with it upon more favorable terms as to character or quality of service, or at any lower rates of charge or lower divisions of rates, or in any respect whatever, than those governing the interchange of the same or similar traffic with the Short Line Co. at Salt Lake City, so that by this contract, the San Pedro Co. is not only prohibited from joining with another company and competing on rates, but it is expressly prohibited from joining with any competitor of the Union Pacific in giving a better quality of service or accepting any lower division for the sake of securing traffic which may be offered to it.

Elimination of Competition Between Southern Pacific and San Pedro.

By section 10 (Folio 240), the San Pedro Co. stipulates that it will make an agreement with the Southern Pacific for its performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs and charges used by the Southern Pacific Co. for the handling of local traffic by said San Pedro Co., which is or may be subject to competition between said Southern Pacific Co. and said San Pedro Co., and that thereafter neither company shall change said rates without the consent of the other, unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad. This stipulation was carried out by making Complainant's Exhibit 33. (Folios 250 et seq.) This agreement is for ninety-nine years, although the lease of the line from Riverside to San Bernardino, which purports to be the excuse for the stipulation (Complainant's Exhibit 36, Folios 263 et seq.), is only for forty-nine years.

By Article 2 of Exhibit 33 (Folio 252), the San Pedro agrees to print, publish and put in force at all points upon its leased, owned or operated railroad for the handling of local business thereon, the lawful rates, tariffs, classifications and charges used by the Southern Pacific for the handling of any local business which may be the subject of competition between them. By Article 3 (Folio 253), each party agrees that after putting in force those rates, neither of them shall change such rates without the consent of the other party, unless such change is made necessary in order to meet the competition of some other line of road, or to "conform to the final decree or judgment of some court of competent jurisdiction or some lawful and valid requirement of state or national law."

It is claimed that it was not the intention of those provisions to cover interstate business, but only local business in southern California. But two facts will be observed with reference to that provision: first, there is no language limiting the scope of the provision to southern California, but it is only local business on the railroad; and second, it is very difficult to see, although Mr. Gibbon makes a rather interesting explanation in his testimony, why the matter of changing rates pursuant to some lawful and valid requirement of *national* law, should have been inserted if it was intended to apply solely to California business. It is a curious fact that while it is insisted that the word "local" means southern California business, Mr. Wells in his statistics showing the movement of citrus fruits, which appears as Complainant's Exhibit 80 (Folio 1235), divides that movement into local and through shipments, and at Folios 1217 to 1218, testifies that the word "local" means destined to points west of the Missouri River, which is a very natural use of the word "local," in view of the

fact that the Union Pacific and the San Pedro constitute in fact one line. It is also said that since this testimony was taken two years ago, that agreement has been stricken out of the contract, but it is none the less important as showing the intention of the parties to effectually eliminate competition between the San Pedro and any other parts of the Union Pacific system.

Absence of Competition Between San Pedro and Southern Pacific on Traffic Between Utah Common Points and San Francisco and Los Angeles.

That there has been no competition between the San Pedro and Southern Pacific is shown by the correspondence between Mr. Babcock and Mr. Manderfield, District Freight Agent of the San Pedro Co. at Salt Lake, and the testimony in connection with the same appearing at Folios 3955 to 3963. From this testimony it appears that the San Pedro connects with the Santa Fe at Daggett, and that the latter line runs thence to San Francisco, making a total mileage to San Francisco from Salt Lake by a combination of the San Pedro and the Santa Fe of only 1083 miles, as against 823 miles by the Southern Pacific. Mr. Babcock, a witness of large experience, testified that the rates in force over the Southern Pacific to San Francisco from Salt Lake would be highly remunerative for the transportation of traffic over the line of the San Pedro in connection with the Santa Fe both as to freight and passenger business. (Folio 3961.) He further stated that a line to San Francisco by the San Pedro to Daggett, and thence into San Francisco by the Santa Fe would be an entirely feasible route for the transportation of passengers and property. (Folio 3960.) Mr. Babcock addressed letters to Mr. Manderfield, asking

for copies of the freight tariffs of the San Pedro Co. between Salt Lake and San Francisco, and was advised, under date of March 10th, 1909, that it did not publish any tariffs naming such rates, but that they were published by the Southern Pacific Co. In response to that Mr. Babcock wrote Mr. Manderfield on the 11th of March, inquiring as to whether any tariffs were in existence applying over the San Pedro, Los Angeles & Salt Lake, either via the Santa Fe or Southern Pacific connections to or from San Francisco, and desired to know whether such a route was in operation, or if it ever had been, and for what period and at what time it was discontinued, if at all. In response to that, on March 15th, 1909, Mr. Manderfield replied that his company had never published any tariffs on freight business applying between Salt Lake City and San Francisco, nor had it at any time been a party to such application in tariffs either via the Santa Fe or the Southern Pacific. (Folios 3956-9.) It is stipulated at Folio 5766 that Mr. Manderfield would have testified, if sworn as a witness, that the statements contained in his letters addressed to Mr. Babcock are true. If there was any competition existing between Salt Lake and the coast between the San Pedro and the Southern Pacific, it is apparent that tariffs would be in force, because the traffic between San Francisco and Salt Lake is very large, but the San Pedro does not attempt in any way to participate in it. That the traffic between the coast and Salt Lake and Utah common points is divided, is also shown by the testimony of Mr. J. Ross Clark. At Folios 1137 et seq. he shows that rates between Los Angeles and Utah common points were made over his line the same as the rates that prevailed by the Southern Pacific from San Francisco to Utah common points, which rates were less than the rates previously in force from Los Angeles by way of the Sacra-

mento gateway; and at Folio 1140 it appears that a new schedule was put in in March, 1907, and the Southern Pacific made the same rate from San Francisco. He was then asked:

"Q. Do the Southern Pacific maintain the same class rates that you do from Los Angeles to Utah common points by way of Sacramento?

A. I understand not.

* * * * * *

Q. So that the Southern Pacific has seen fit to retire from the Utah business, so far as class business is concerned?

A. Physical conditions practically compel them to do so.

* * * * * *

Q. So the Southern Pacific are not competitors of the Salt Lake road for Utah common points traffic from Los Angeles?

A. I should say they are.

Q. How are they, if their rates are higher than yours and their line 500 miles longer?

A. I don't know that they get any business.

Q. That is, you mean that their rails are still there?

A. Yes, sir.

Q. But if their line is 500 miles longer, and their rates are higher, they are not very energetic competitors, are they?

A. They are not likely to get much of it, *and it is not expected that they would.*" (Folios 1140-41.)

In connection with the cross-examination of Mr. Munroe, Complainant's Exhibit 210 was identified by him and offered in evidence, (Folios 6838 et seq.). It is a memorandum and understanding between the San Pedro, the Oregon Short Line, the Union Pacific and the Southern Pacific, dated August 2, 1905, changed January 27, 1906. This shows an absolute agreement to eliminate competition

between the San Pedro and the Southern Pacific in two particulars, and explains the failure to put in rates to San Francisco in connection with the Santa Fe. We quote from Clause A as amended:

> "Except on basis of added locals San Pedro Company will not join in rates to or from points north of Mojave and Santa Barbara on any traffic to or from Utah common points and east thereof."

It will be seen that that is an express agreement that the San Pedro will not unite with the Santa Fe or any other company on joint rates, which of course would shut the San Pedro out of San Francisco and all territory served by the Santa Fe or Southern Pacific north of the Tehachapi Pass. Subdivision 9 of the original agreement, which is continued in force, (Folio 6842) is as follows:

> "It is understood that while it is expected that agents will use every effort to secure business, both local and through, it is not desirable that any effort be made or continued in order to change the routing of freight which has been secured by either company; hence when car or cars are ordered, solicitation with either shippers or consignee must cease."

We will show in connection with our discussion of the Santa Fe situation that Mr. Wells testified that the fast citrus fruit trains were taken off after a protest by the Southern Pacific and the Santa Fe. There is a large celery traffic originating on the lines of the Southern Pacific moving over the San Pedro road. (Folio 1129.)

Oriental Traffic.

There is another very interesting circumstance in connection with this road; that is, that it has not engaged in the Trans-Pacific trade. We have called attention to the testimony showing the large terminal facilities possessed by the road on San Pedro Harbor, and the grandiloquent remarks with reference to the harbor of San Pedro put forth by the promoters of this road. It is therefore somewhat distressing to observe that Mr. J. Ross Clark testified that his road had no steamship connections at San Pedro except coastwise steamers. (Folio 1133.) He testified as follows:

> "Q. There is no line of steamers plying between San Pedro and the Orient?
>
> A. No regular line of steamers. We had an Oriental ship in there several months ago, but that is, I think, the only one that has been here—the only one to my knowledge, or as far as I have had anything to do with it.
>
> Q. That would be a tramp ship?
>
> A. That would be a tramp ship, yes, sir.
>
> Q. You have no line established as a connection with yours or otherwise?
>
> A. We have not.
>
> Q. Does your line participate in any Trans-Pacific traffic at all?
>
> A. Not to my knowledge.
>
> Q. That all moves by San Francisco?
>
> A. That all moves by San Francisco."

Mr. Dollar, of the Robert Dollar Steamship Line running between the coast and the same points in the Orient that are reached by the Pacific Mail and its allied lines, testified, (Folios 5019 to 5021), that although his line of boats had been established for seven years, they had never had through rates in connection with any of the transcontinental railroads; they bring from the Orient cargoes consisting

of general merchandise, and have been making the port of San Francisco. He was then asked if they had ever had negotiations with any railroad company with reference to establishing through rates with them, and testified that they had had with the San Pedro road. He first had the matter up with Mr. Gillette, who was formerly the Traffic Manager; then with Mr. Wann, the present Traffic Manager, and with the General Manager Mr. Wells; that those negotiations were protracted over a period of several years, and they proceeded to the extent of the drafting of an agreement, and it was proposed that the Dollar Line should make San Pedro its principal port that it was to be left optional with them to make San Francisco also, but they had to make San Pedro first; that in the course of the negotiations the matter was referred to New York, but he does not know to whom in New York, and it was also put up to Mr. Bancroft, who is Vice President of the San Pedro and General Manager of the Short Line, and the final result after referring it to New York and to Mr. Bancroft, was that no deal was made, although the Dollar Steamship Line was willing to make an arrangement.

So the magnificent terminal facilities possessed by the San Pedro road at San Pedro have not been allowed to interfere with the business of the Pacific Mail, and it is stipulated in the record, (Folios 1080-81), that the Southern Pacific Co. makes no through rates in connection with lines or boats across the Pacific, with the exception of the Pacific Mail, the Japanese Line, and the Occidental & Oriental Companies, the traffic of all of which is managed by Mr. Schwerin and that any other boats bringing in traffic to San Francisco have to pay the regular San Francisco rate to the east.

THE ACQUISITION OF THE STOCK OF THE DEFENDANT ATCHISON, TOPEKA & SANTA FE RAILWAY CO., BY CERTAIN OF THE INDIVIDUAL DEFENDANTS, AND THE DEFENDANT OREGON SHORT LINE RAILROAD COMPANY, RESULTING IN CERTAIN COMMON DIRECTORS, AND LESSENING OF COMPETITION, WAS A PART OF THE SAME GENERAL CONSPIRACY, AND UNLAWFUL.

Purpose of Defendants in Buying Stock Was to Lessen Competition.

The relations between the Atchison, Topeka & Santa Fe and the Union Pacific, of which complaint is made in this action, began in 1904, when the individual defendants Harriman, Rogers, Stillman, Schiff, Kahn and Mr. William Rockefeller [an intimate associate who figured in the scheme testified to by the late defendant Mr. Harriman, to protect the control of the Southern Pacific at the time the Union Pacific control was assailed by Mr. Keene and his associates (Harriman's testimony, Folios 1272 et seq.)] bought up a lot of stock in the Santa Fe and demanded representation on the board. This demand resulted in the election of defendants Rogers and Frick under circumstances that will be detailed. Both were at the time and continued to be directors of the Union Pacific Railroad Company. Frick was a member of the Executive Committee of the Union Pacific. All the circumstances in connection with this matter go to show that the allegations in the complaint are true, and that the acquisition of this stock by the individual defendants and the acquisition of ten millions of stock by the defendant Oregon Short Line Railroad Co. were part of the general scheme to control the railroad situation in the transcon-

tinental territory. Complainants put on the stand the defendant Schiff for the purpose of showing certain facts by him. At Folio 1807 Schiff testified that he knew that in 1904 requests were made on the Santa Fe people for representation of himself and his associates. The term "associates" included William Rockefeller, Henry H. Rogers, Harriman, Stillman, and Kuhn, Loeb & Co.; that they had purchased a large amount of stock of the Santa Fe and were entitled to two directors, and wanted to get them without resorting to cumulative voting. He was then asked (Folio 1808) as to his object in asking for this representation, and testified:

"A. We were large owners of Atchison, Topeka & Santa Fe stock, and we wanted to have representatives on the board to know that our interests were properly protected.

Q. Were you dissatisfied with the management of the Santa Fe road at that time?

A. I do not think we were.

Q. Were there any changes in the management that you desired to have made?

A. As I have said, we wanted to have two of our own representatives put on. It is but usual and natural that large stockholders should want to be represented on the board of managers.

Q. Yes; but I say was there any particular method of doing business on the Santa Fe that was objectionable to you, so that you wanted representatives to change it?

A. Not as far as I personally know.

Q. Did you know of anybody else in your syndicate who was dissatisfied?

A. I do not.

Q. Then there was no change of method of operation that you desired?

A. Not as far as I know of."

So that we have the admission of Mr. Schiff that there was no dissatisfaction with the management of the Santa Fe, and the only object that could have been desired was to get directors in the Santa Fe board, so that the Union Pacific might have a voice in the management of that property.

Mr. Deming, the Assistant Secretary of the Atchison, Topeka & Santa Fe Ry. Co., and the custodian of the records of the stockholders and directors, produced Complainant's Exhibit 99 (Folio 1573), a portion of the records of a meeting of the directors of that company, held Feb. 8, 1905, which showed that the defendant Frick was elected director in place of Mr. Kenna, resigned, and that the late defendant Rogers was elected in place of Mr. McCullough, resigned; that the term of office of Mr. Frick was until the annual meeting of 1908, but the term for which Mr. Rogers was elected was only until the annual meeting of 1905. Mr. Deming also produced Complainant's Exhibit 100 (Folio 1575), which shows that at the annual meeting in October, 1905, three directors were elected for four years, namely, Mr. Cheney of Boston, Mr. Haven of New York, and Mr. Rogers. Mr. Cheney was an old director, as appears by Exhibit 99, which shows that he was one of the directors present at the election of Mr. Rogers.

Mr. Deming also produced Complainant's Exhibit 101 (Folio 1577), which shows that at the annual stockholders' meeting held October 22, 1908, Mr. Frick was one of the directors who was re-elected for a term of four years.

It appears by Harriman Exhibit No. 2 (Folio 1264) that the Oregon Short Line Railroad Co. purchased ten million dollars par value of the preferred stock of the Atchison, Topeka & Santa Fe Ry. Co. on July 10, 1906.

It is important to bear these dates in mind; that is, that the demand for representation on the Santa Fe board, made by these Union Pacific directors, was in 1904. In the early spring of 1905, Frick and Rogers went on the board. Rogers was re-elected in the fall of 1905 for four years. Frick's term did not expire until 1908. In 1906 the Oregon Short Line bought its stock.

At Folios 5624 et seq. appears Complainant's Exhibit 200, showing the aggregate individual ownership of the defendants Harriman, Frick, Kahn, Rogers, Schiff, Stillman, and the firm of Kuhn, Loeb & Co. and the stock held by any two or more of them jointly in different defendant corporations.

At Folios 5632-3, there is an exhibit of their stock ownership in the Santa Fe. We call particular attention to subdivisions 17, 18 and 19 of Exhibit 200.

Here is a clear demonstration of the fact that these defendants purchased the Santa Fe stock for the purpose of getting their directors. They caused the Oregon Short Line to buy ten millions for the purpose of perpetuating that representation. At the annual meeting in September, 1904, they owned jointly 178,000 shares of stock, separately only 3,000 shares, making an aggregate of a little over eighteen millions par value. This was the year that demand was made for representation. The next year they had secured the election of two directors by the board in the spring. But the re-election of defendant Rogers was to come up in the fall of 1905. Therefore, we find that at the annual meeting in September, 1905, as shown in subdivision 18 of Complainant's Exhibit 200, there was still a joint ownership of 162,860 shares, and separate ownership of only 100 shares. Rogers was re-elected. His term was for four years, running to 1909. Frick's term did not run out until

1908. Therefore there was no reason to retain this stock for the purpose of this representation, as that had been fixed for a period of years and was protected by the $10,000,000 of stock acquired by the Short Line in 1906.

That this stock was acquired by the Union Pacific for the very purpose of enabling it to claim a voice in the management of the Santa Fe was directly testified to by defendant Kahn. After stating the enormous amount of money that came into the treasury of the Oregon Short Line from the sale of its Great Northern and Northern Pacific stocks, and the decision of the executive committee that it was not advisable to invest the same in bonds or in calling in the bonds of the Union Pacific, he said, at Folio 7881:

> "So there was the only alternative left for the investment of that enormous fund of buying high-class stocks bringing from 4½% to 5%, *and having at the same time the collateral advantage of giving to the Union Pacific some kind of a voice—simply as the voice of a considerable stockholder—in the councils of those principal lines from which the Union Pacific, through its connections derives a great deal of valuable traffic, and that was the policy which was finally decided upon, and that was the policy which explained the purchase of the Atchison preferred stock and of most of the other purchases in 1906.*"

In the face of this direct admission that one of the purposes of buying this Santa Fe stock was to give the Union Pacific a voice in the councils of the Santa Fe, it is perfectly idle to try to evolve any fine distinction between the late defendant Rogers as an individual and as a Union Pacific director, or between the defendant Frick as an individual and as a Union Pacific director.

And we find that at the next meeting in September, 1906, after the Short Line had obtained its ten millions of stock,

this joint individual ownership, which amounted to over sixteen millions of stock the preceding year had absolutely disappeared.

Section 19 of Exhibit 200 shows that at the meeting of 1906, no stock was owned jointly by these individuals, and only a matter of 14,700 shares by all of the defendants separately. So that Mr. Schiff's anxiety for representation for his stock and that of his associates, although he knew of no objection to the way the Santa Fe was being managed, and although neither he nor any of his associates had any suggestions to make as to changes in operation, lasted until the Union Pacific directors were seated on the Santa Fe board. The late defendant Rogers also became a member of the executive committee from Feb. 8, 1905, Complainant's Exhibit 110, Folio 1901, which shows that to put Mr. Rogers on the executive committee it was necessary to crowd off that committee Mr. B. P. Cheney of Boston, an old member of the board, since re-elected, as we have shown, but who does not happen to belong to the little coterie of Union Pacific directors and their associates in New York City. The necessity no longer existing for these gentlemen to retain this stock, the Short Line having ten millions to keep up the pretense, they all sold out. The purpose of securing this stock plainly appears upon the cross-examination of Mr. Morawetz, a witness for the defendant, and is also shown in the testimony of the defendant Harriman. Mr. Morawetz, as the court knows, is a great lawyer and an estimable gentleman. It is apparent that he endeavored, against great odds, but without success, to maintain the integrity of the Santa Fe system. He testified, (Folio 1853), that he was a member of the committee which reorganized the system

in 1895, and from the time the new company was organized and took over the properties, in January, 1896, he was a member of the board and of the executive committee and its general counsel, and in 1898 became the chairman of the executive committee, and remained on the committee until October, 1908, when he resigned both as chairman and director.

Mr. Morawetz testified on direct examination, (Folios 1859-60), that while a certain controversy was going on with reference to a line built by the Santa Fe in southern Arizona, (as we will show later in the face of the Southern Pacific opposition, but which after being constructed, was unlawfully turned over to the Southern Pacific because it was an invasion of territory claimed exclusively by that company), the late defendant Harriman, in September, 1904, informed him that Harriman and some of his associates had purchased about 300,000 shares of Santa Fe stock, and asked for representation on the board of directors. Mr. Morawetz stated to him that he would never willingly give any representation on the board to the Union Pacific Railway, or to any rival company. Mr. Harriman then said that the stock was not owned by the Union Pacific or the Southern Pacific, but was bought by himself and other gentlemen associated with him, as a private investment, because they believed in the Santa Fe property and in the country through which its lines ran. Mr. Morawetz enumerated the same gentlemen who were named by Mr. Schiff, and then proceeded, (Folio 1860):

> "I stated to him that I would not be willing to give any of these gentlemen a place on the Board of Directors until the differences existing between the Atchison and the Union Pacific Company had

been adjusted; but if those differences were adjusted I would be willing to give to those gentlemen some representation on the Board of Directors in view of their personal holdings, with the understanding that the nominees would be acceptable and satisfactory to my own Board of Directors. I further stated that I would not be willing to have any of the executive officers, including himself, on our Board of Directors. There was a little difference of opinion between us on that point. Mr. Harriman and I had discussed the subject—the general railway policy—on more than one occasion, and he urged that the management of great railway systems—the different great railway systems in the country—should deal with each other openly, fairly, and in a broad spirit of live and let live; and I agreed with him as to that general policy. I remember telling him that it was my belief that many, if not most of the abuses in railway management were due to a failure to observe that policy, and to attempts of the officials of rival companies to obtain advantages over the others through petty methods and sharp practices; *but I told him that I did not believe in having the officers of one company upon the Board of Directors of a rival company. He did not agree with me as to that, because he suggested that he should go on the Atchison Board, and he offered me a place on the Executive Committee of the Union Pacific or the Southern Pacific, I don't remember which.*"

Mr. Morawetz further testified at Folio 1862:

"As further explanation, I wish to state that in discussing the question of representation on the Board of Directors, Mr. Harriman and I were quite open with each other. I realized and he realized that the gentlemen whom I had named could, if they had desired, have elected four directors of the Atchison Company—four out of fifteen —because our Board is a classified board, and under

the system of cumulative voting one-fourth of the stock represented at a meeting can always elect one director, so that in four years the holders of one-fourth of the amount of stock represented at the meetings could put in four directors. With 300,000 shares to start with, and the proxies which they might obtain, it was evident that they could have elected one director a year—and then kept four directors in office. But I pointed out that no good could be obtained, either to the individuals or to the property by the Board of Directors divided against itself, and that the only sensible course was to act amicably and give fair representation to these large interests, which I suggested should be two."

We have in Mr. Morawetz's direct examination the most favorable construction that can be placed upon the situation.

Mr. Morawetz testified on cross-examination (Folios 1890, et seq.); referring to his conversation with Mr. Harriman:

"Q. You had some discussion with him about the propriety of his going on your board?

A. Yes.

Q. Did he ask to go on your board?

A. Yes, as I have stated. He suggested he should go on the Atchison board, and that I should go on their board.

Q. Why did he say he wanted to go on the Atchison board?

A. I don't think he assigned any reason.

Q. On your direct examination you gave some explanations as to conversations you had had with Mr. Harriman.

A. As to policy.

* * * * * *

Q. Let me ask you this: In substance did he ask to be put on the Atchison board so that he

might be kept advised as to prospective action to be taken by the Atchison?

A. He did not so state, but of course, the object of going on a board of directors would be to take part in the management. There could be no other.

Q. So that he wanted to go on the board so as to take part in the management of the Santa Fe road, and you objected to it?

A. I objected to his going on the Santa Fe board and objected equally to my going on his board.

Q. Why did you make that objection?

A. Because I did not believe it to be wise to have the officers of a rival company on the board of directors.

Q. Why not?

A. Because I thought, and still think, that the management would be more satisfactory if there were no divided counsels upon the board."

After giving this testimony, Mr. Morawetz said that he didn't think that objection applied so strongly to common directors as to directors who were officers of another company, although he admitted that it was laid down in some books on corporations of recognized merit, that directors who are adversely interested in other companies, are disqualified from acting, and that a corporation is entitled to the unbiased advice of each member of its board of directors. (Folio 1891.)

Again, at Folios 1892-3, on cross-examination, Mr. Morawetz admitted that when any question arose as to whether additional facilities should be provided, the Atchison board would be entitled to the unbiased judgment of its board of directors upon the question, and then testified:

"Q. And if the Santa Fe were in active competition with other transcontinental lines, any additional facilities of the Santa Fe which enable them

to do business more cheaply helps them that much in their competition with the other lines, doesn't it?
A. Yes, sir."

At Folio 1894 he admitted that Mr. Frick's name as a director was suggested by Mr. Harriman, and that Frick was at that time a member of the Union Pacific board.

At Folios 1896 and 1897, his attention was called to the testimony of Mr. Harriman, given before the Interstate Commerce Commission, and which appears in this record at Folio 1278, with reference to his interviews with Mr. Ripley, the President of the Santa Fe, and Mr. Morawetz, concerning representation on the Santa Fe board, Mr. Harriman's testimony being as follows:

"It was in substance that we were to try to establish a better relationship between all the railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other, and for developing the territory served by each, and to that extent I even went so far with Mr. Morawetz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on the Executive Committee of the Southern Pacific so that he might know what our intentions were, if he chose to."

Mr. Morawetz stated that that was about his recollection of the conversation, (Folio 1897):

"Q. Then it was his opinion, expressed to you, that you should have common directors, and the roads should be operated so as to help each other instead of being operated, as he expresses it, to destroy each other or in opposition to each other,

they should be operated to help each other, is that right?

A. Yes, substantially that.

Q. *And he speaks of them being so operated as to develop the territory served by each, and then his idea was that wherever the Southern Pacific had established itself in a certain territory, or wherever the Santa Fe had established itself in a certain territory, the other lines should not build in and attempt to divide the business, is that right?*

A. *Substantially that.*"

Certainly there could be no more striking evidence of the purpose, intention and effort of this Union Pacific combination than was thus given by Mr. Morawetz.

When Mr. Harriman invited Mr. Morawetz on to his board, it was clearly not because Mr. Morawetz had any stock, that was entitled to representation upon the Union Pacific and Southern Pacific board. Mr. Morawetz said, (Folio 1868), that he never owned a share in the Southern Pacific Co., and that during the recent panic he bought one or two thousand shares of Union Pacific, held it for three days, and then sold it; except for that, he never owned a share of Union Pacific stock. Therefore, Mr. Harriman's object in having this exchange of directors, if it might be so termed, was to secure to a considerable extent, coordinate action by the Southern Pacific, Union Pacific and Santa Fe. In spite of the necessity that Mr. Morawetz felt under to justify his action with reference to certain controversies with the Southern Pacific, to which we will refer in a moment, and his effort to defend the admission of these Union Pacific directors to the Santa Fe board, he admitted that as a general proposition, he would of course approve of independent boards of directors. (Folio 1891.) At Folio 1907,

in answer to counsel for certain of the defendants, Mr. Morawetz testified:

> "I stated to Mr. Harriman at the outset that I never would consent to representation on the Atchison board of any Union Pacific stock, but that as those gentlemen were very large stockholders in their own interests, and as they had the power to elect directors, I should favor giving them representation voluntarily and amicably."

And at Folio 1908, on re-cross examination, we find the following:

> "Q. You said that you told Mr. Harriman that you would not consent to any Union Pacific stock being represented. Suppose the Union Pacific had had this 30 millions of stock, or 27 millions, or whatever it was, in its treasury at that time, how would you have prevented it?
>
> A. Well, I should have said, 'Force your way on the board if you can, but you won't get there with my consent.'"

Then, after testifying that he knew that after the date of the transactions concerning which he had been interrogated, the Union Pacific purchased ten millions of stock, he further testified:

> "Q. Now you say that if the Union Pacific itself had owned this stock, and had suggested a representation on the board, you would have let them fight their way in through the elections?
>
> A. Yes, sir.
>
> Q. And that is still your attitude, is it?
>
> A. It was when I resigned from the Atchison board.
>
> Q. *And in your opinion it is not proper, is it, that a corporation should own stock in a rival competitive line?*

A. *It is certainly undesirable, if it is legal.*

Q. And of the latter you are not prepared to give an opinion as a witness, I suppose. (Witness laughs.)

Q. *You leave the legality open?*

A. *I leave it open.*"

Phoenix & Eastern.

Mr. Frank M. Murphy built the Santa Fe, Prescott & Phoenix Railroad, which runs from Ash Fork on the main line of the Santa Fe in Arizona, to Phoenix, and as will be seen by the map, it is the only line opening up a large territory in Arizona. After building this line, Mr. Murphy sold its stock to the Santa Fe, but has remained its President, it being still operated as a separate organization, although in connection with the trains of the Santa Fe. (Murphy's testimony, Folios 1659-60.)

Mr. Morawetz testified as follows with reference to this transaction, and to the regard in which Mr. Murphy is held, (Folios 1853-4):

> "In 1901 the Atchison company bought the stock and second mortgage bonds of the Santa Fe, Prescott & Phoenix Railway Company. At that time Mr. Frank Murphy was the president of the company. On account of Mr. Murphy's familiarity with the property and with the territory through which the line runs, and on account of our respect for his ability and his character, he was requested to continue to act as president of the company, and he has so acted until the present day."

Phoenix is the capital and largest town in Arizona. It has an outlet through this Santa Fe line built by Mr. Murphy. It also has another outlet by way of Maricopa, from which point a branch of the Southern Pacific runs up to Phoenix, a distance of about 34 miles. (Folio 1661.)

Thus Phoenix, which is the center of the Salt River valley, has been for years served by the Santa Fe from the north, the Southern Pacific from the south, and by no other lines.

In 1901 Mr. Murphy incorporated the Phoenix & Eastern, and had surveys made from Phoenix to Benson, Arizona, by way of Tempe, Mesa, and Florence and the San Pedro River. Benson is on the Southern Pacific, and is also the western terminus of the El Paso & Southwestern railroad, which runs between El Paso and Benson. This is an independent line of road owned by the Phelps-Dodge mining interests. (Folio 1662.) It is the only road at Bisbee, a town of 17,000 people, where the great Copper Queen mine and other mines are located.

At El Paso this line connects with the Santa Fe, Southern Pacific, Texas Pacific, and the Rock Island, and also with the Mexican Central. At present the line has no connection for the west from Benson except with the Southern Pacific, but if the Phoenix & Eastern had been built through to Benson, as was projected by Mr. Murphy, the El Paso & Southwestern would have had a connection through the Santa Fe to the Pacific Coast.

In the testimony of Mr. Murphy, at Folios 1664 to 1728, there is a very interesting story of the elimination of actual and possible competition, and an application of Mr. Harriman's theory testified to by Mr. Morawetz—that wherever the Southern Pacific had established itself in a certain territory or wherever the Santa Fe had established itself in a certain territory, the other line should not build in and attempt to divide the business. From this testimony of Mr. Murphy it appears that after he had organized the Phoenix & Eastern Co. to build a line from Phoenix to a connection with the Phelps-Dodge road at Benson, the enterprise was taken over by the Santa Fe *and after having been partly*

constructed was turned over to the Southern Pacific at cost and interest as part of the same arrangement under which the Union Pacific directors went on the Santa Fe board.

An inspection of Complainant's Exhibit 108 which is a map of the Santa Fe system, in the record Vol. 3 opposite page 1048, shows the line of road from Phoenix to Dudleyville in black, as this is a Santa Fe map, and the Southern Pacific lines are in black and the map was made after the road had been turned over to the Southern Pacific. From Dudleyville by the canyon of the Gila River to the northeast, and thence to the southeast, through to the Santa Fe line at Deming, will be seen a projected line of road marked by Mr. Murphy on the map in red ink. This is a proposed line that he testified to and marked. See Folio 1711. The Santa Fe had recently completed what is known as its Belen cut-off, which is a low grade line leaving the old main line of the Santa Fe some distance south of Albuquerque, and running east to Texico, thence northeasterly up into Kansas, connecting with the old line. By the use of this line, it has eliminated the mountain haul over the Raton Pass, and other difficult mountain climbing. Mr. Murphy testified that if the Santa Fe had retained the line to Dudleyville, and constructed the line indicated by him in red ink, to Deming, it would have had, upon the completion of the line between Parker on the Colorado River in Arizona and Bengal, California, a through transcontinental line, with no mountain climbing, and constituting much the best line between the east and California. (Folios 1669-1673.) He said at Folio 1674, that this proposed line would be the best low grade line to the Pacific coast—better than the Southern Pacific, the Union Pacific, the Great Northern or the Northern Pa-

cific. On cross-examination, Mr. Murphy explained that the construction of this line through the canyon and up to Deming, for the purpose of forming a portion of a new low grade transcontinental line, was discussed a good deal with Santa Fe officials, including Mr. Ripley, the President, Mr. Morawetz, Chairman of the Board, and other directors. He makes this significant statement at Folio 1696:

> "They (the Santa Fe officials) were always confronted, as they represented to me, with the fact that they were being charged with trespassing on Southern Pacific's territory in going down there; but in building the low-grade transcontinental line they were protecting their own interests and enhancing the value of their own property.
>
> Q. Will you be good enough to say which you wish us to understand—that they were building the Phoenix & Eastern for the local business, or building it because of the Belen cut-off or that it would have been a waste of their money to build the Phoenix & Eastern unless it was intended to use it in connection with the Belen cut-off?
>
> A. It would not have been a waste of their money to have built it for either purpose. I think it would have been to their advantage to have built it exclusively for the low-grade line service of their transcontinental business if they hadn't the local business; and I believe that there will be sufficient business developed along that line to justify its construction, without any transcontinental business."

So that line originally projected by Mr. Murphy from Phoenix to Benson, where it would connect with the El Paso & Southwestern, became, after he turned it over to the Santa Fe, a double-headed proposition, namely, to a connection with the El Paso & Southwestern at Benson from Dudleyville, and an extension to the east from Dudley-

ville through the Gila canyon or through some other East and West canyon to Deming. He testified that when he first incorporated the company, he had an understanding with the El Paso & Southwestern for an exchange of traffic, as that line wanted the western outlet. These negotiations with the El Paso & Southwestern are detailed by Mr. Douglas, the President of that company. (Folios 1916 et seq.) From this testimony it appears that the matter was gone into in very considerable detail.

Mr. Murphy further testified that under the present railroad situation, Phoenix and contiguous regions, reach the Gulf ports only by way of the Southern Pacific to Maricopa, and thence to Galveston, unless they run up north over the Santa Fe and work down through, which is a very long line, but if the line that he projected had been built through to Benson to a connection with the El Paso & Southwestern, other new routes to Gulf ports would have been opened up in connection with the Texas & Pacific, and the Rock Island, from El Paso. (Folio 1688.)

He stated that in building the line of the Phoenix & Eastern for the Santa Fe, he was interrupted and interfered with by an organization known as the Arizona Eastern Railroad Co., owned by the Southern Pacific. He says:

> "We built about 80 miles of road there uninterruptedly, and about the time we completed the survey through the canyon to Deming it seems the Arizona Eastern was incorporated; and one day, very much to our surprise, we found a whole lot of graders had been shipped in across the country in some way, that were put up on the side of the mountain above us, and blasted rocks down on our work, taking possession of our right of way.
>
> Q. What happened then?

A. We enjoined them, and then we had it rough and tumble from that time until—

Q. What was the result of the injunction suit?

A. The grand wind-up was that our rights were sustained in the Supreme Court of the territory and we were left in quiet and peaceful possession of the road as far as Dudleyville. In the meantime other parties had appropriated the canyon above and did a lot of work up in there, and while we were occupying that position the understanding referred to in this agreement was reached and the road was turned over to the Southern Pacific." (Folios 1674-5.)

From this it appears that the Southern Pacific, before it reached such amicable terms with the Atchison, endeavored to prevent the construction of this line into its territory, or the through line, by blasting rocks. Being defeated in the courts, a few gentlemen got together in a quiet corner in New York, and fixed it up by surrendering the line to the Southern Pacific. On cross-examination, it was apparently endeavored to show that Mr. Murphy's opinion as to the value of his line to the Santa Fe was not that of an expert. (Folios 1703-4.) But counsel learned from him that he had had experience in constructing several lines for the Santa Fe. He then gave the following testimony:

"Q. Well, in your opinion, Mr. Morawetz and Mr. Ripley and the directors of the Atchison made a very great mistake in throwing away this low grade line from Chicago to California, didn't they?

A. Yes, sir. And I am not saying that as putting my judgment against Mr. Ripley's as a railroad man, either; but I am saying it because I know more about the country and the business of the country than Mr. Ripley did.

Q. You put it on that ground, do you?

A. Yes, sir.

Q. That you think you know more about the Arizona situation?

A. Yes, sir, very much."

Mr. Murphy, on direct examination, had stated that he thought he had been informed by Mr. Morawetz that the reason the Phoenix & Eastern stock was turned over to the Southern Pacific was that it was claimed by that company that its territory was being invaded by the construction of this line to the Santa Fe. This was gone into on cross-examination as follows (Folio 1704):

"Q. If you meant in answer to direct questions to say that Mr. Morawetz told you that one of the reasons why the Phoenix & Eastern stock was sold to the Southern Pacific was that the Southern Pacific, or anybody for the Southern Pacific, claimed that it was Southern Pacific territory—or whatever you said—will you please state when Mr. Morawetz told you that, and where?

A. It was in New York, and it was at some time when we were discussing the difficulties that we were having down there in Arizona when the Southern Pacific people were trying to prevent us from building that road.

Q. But the sale wasn't made until some time after you were left in peaceable possession of this canyon?

A. Well, the actual sale wasn't made, but the general understanding was had long before."

It further appeared that at the time the Phoenix & Eastern was sold to the Southern Pacific, that company had a line of road running parallel with it out of Phoenix as far as Mesa, 17 miles, Mesa being in the Salt River valley and the point from which the Government wagon road starts for the Roosevelt dam. (Folio 1714.) As showing the

good faith of this transaction to the people of that part of the country, it should be noted that Mr. Murphy, (Folio 1665), when asked what had been done toward acquiring rights of way down to Benson, after stating that he had secured the right of way for the entire distance, that some of it was given to him and some purchased, testified:

> "Q. What, if anything, did the Phoenix & Eastern do toward securing terminals in Benson?
>
> A. We got the citizens there to buy some ground that gave us the right to get through providing we experienced difficulties in making satisfactory arrangements in crossing the Southern Pacific and in making our connections with the El Paso & Southwestern." (Folio 1665.)

He further testified, (Folio 1668); which is very important considering the fact that the line was actually constructed to Dudleyville, which is the point at which the San Pedro River flows into the Gila, the projected line from this point, to Benson, being up the San Pedro:

> "Q. What kind of country is there between Winkelman or Dudleyville (whichever you may call it), to build a railroad through?
>
> A. In the western territory we call it very easy country to build a railroad into.
>
> Q. Did you have estimates made as to the cost of concluding that line down to Benson?
>
> A. Yes, sir.
>
> Q. How much would it cost a mile?
>
> A. The kind of a road that we were going to build I think about $20,000 a mile."

Surveys Through the Gila Canyon and Aravaipa Canyon to Determine Best Route to the East for Low Grade Trans-Continental Line.

Mr. Murphy was recalled by the complainant, and testified at Folio 8315, et seq, and supplemented his original testimony in a few particulars. He was asked if anything had been done by his company looking to the construction of a line through the Gila Canyon previous to the time that the Arizona & Eastern, the Southern Pacific subcompany, was organized, and the difficulty was had over the right-of-way mentioned in his former testimony, and he stated that they had surveyed a line through that canyon having had engineers in there for several months and had surveyed the line clear through to Lordsburg, the survey beginning in May, 1903, and being finished in December, 1903. The latter month was prior to the organization of the Arizona & Eastern. He said the reason for this survey was to get information with a view to building a railroad extending the Phoenix & Eastern to a connection with the Santa Fe at Deming, being a part of the proposed transcontinental line that he marked on the map when he first testified; and in addition to making that survey the Phoenix & Eastern had made another survey through what was known as the Aravaipa Canyon. This canyon runs at right angles to the proposed line to Benson about ten or twelve miles beyond t ie present terminus of the Phoenix & Eastern at Dudleyville, and is an east and west canyon parallel with the Gila Canyon. He said, at Folio 8317, that the purpose of making the survey up that canyon was to make a comparison of costs and see whether they could find a feasible line that would be less expensive than the line through the Gila Canyon. Mr.

Morawetz also speaks of the consideration being given to the Aravaipa Canyon for the low grade line. (Folio 1870.) The expenses of those surveys were paid by the Phoenix & Eastern, at that time controlled by the Santa Fe under authority given to Mr. Murphy by Mr. Ripley, the President of the Santa Fe. At Folio 8318 Mr. Murphy further testified that a railroad company called the Gila River Railroad Company, was incorporated for the purpose of building the line through the Gila Canyon. Further showing that it was the intention of the Santa Fe to build this low grade transcontinental line, Mr. Murphy testified at Folio 8324 that for that purpose they had changed the specifications for the bridges where the Phoenix & Eastern crossed the Gila Canyon, bringing them up to the Santa Fe's latest standard so as to carry their heaviest motive power. This clearly would not have been done if it had been the intention to build only a branch line. At Folio 8325 he testified:

> "Q. How long after you inaugurated the Phoenix & Eastern was it that the Santa Fe officials concluded to make this part of the transcontinental line as well as to go to Benson?
>
> A. The matter was under consideration all the time, being discussed, and the engineers were exchanging views, Mr. Dunn and Mr. Drake, and we were also having the territory looked up west of Wickenburg, with a view of building the 200 miles that we have now nearly completed; it would be a part of that line."

Summing up the situation, then, as it existed at the time the Santa Fe turned this line over to the Southern Pacific, we find that the line was projected from Phoenix through to Benson and Deming, built as far as Dudleyville, about 96 miles, for 17 miles of the 96 being paralleled by the line of the Southern Pacific running from Phoenix to

Mesa. This traversed the Salt River valley, one of the most fruitful regions of the world, and the importance of which as an agricultural region will be much augmented by the construction of the Roosevelt dam which will irrigate 250,000 to 300,000 acres. It also reached a mineral country destined to be a large copper producing country. (Folios 1678-81.) It is a well known fact that Arizona is either first or second in the production of copper, of all the states. The line could have been extended from Dudleyville to Benson for the remarkably low cost of $20,000 a mile, where it would have connected up with the El Paso and Southwestern, a line anxious for a new western connection, being now confined to a connection with the Southern Pacific alone, and connecting at El Paso, its eastern terminus, with various lines independent of the Southern Pacific. It would also have opened up to the Santa Fe a connection with the Mexican Central out of El Paso. The extension of the line as contemplated from Dudleyville by the Gila canyon or the Aravaipa canyon to the Santa Fe's present line to Deming would, upon the completion of the line from the Colorado River to Bengal, (now finished), have given the Santa Fe a complete new transcontinental line somewhat longer than its other line, but without the necessity of any mountain climbing whatever until dropping over into San Bernardino, California. This state of things existing, it is rather shocking to read Complainant's Exhibit 104, (Folios 1585 et seq.), under which the Santa Fe sold to the Southern Pacific Co. all the shares of the capital stock of the Phoenix & Eastern Co. for a price simply covering the cost of the Phoenix & Eastern line, with interest.

Northwestern Pacific.

Another item entering into this transaction which serves as an example to show how communities and people are traded off through negotiations conducted thousands of miles from the seat of activity of these great public service corporations, was the situation in Northern California. It is described at Folios 1855-6, by Mr. Morawetz. The Santa Fe concluded to extend its system into the territory north of San Francisco Bay, and negotiations were started with the owners of the stock of certain lines running from the Bay, among them the California & Northwestern Railroad, but during those negotiations the stock was sold to the Southern Pacific. In the autumn of 1902, the Santa Fe bought the stock of the Eel River & Eureka Railroad, a short line extending out of Eureka, the traffic of which at that time was chiefly timber into Eureka, from whence it was transported by ship. Mr. Morawetz says they bought the line for the purpose of obtaining that traffic, and for the purpose of obtaining a foothold in the territory there that they had desired to enter, and for which they had intended to buy the line of road purchased by the Southern Pacific.

It appears by the testimony of Mr. Payson, who when testifying had charge of those lines, as assistant to the President of the Santa Fe, (Folio 880), that there was considerable general business done over this line, and that the Santa Fe had acquired certain other small lines in that region of California; but all the timber there produced had to move out by ship from Eureka, the bulk of the lumber coming down to San Francisco, and being further transported over rail lines. (Folio 881.) The Santa Fe had also acquired the Fort Bragg & Southeastern,

a line starting from the coast at the port of Albion running about 23 miles southerly and easterly, Albion being about 200 miles south of Eureka on the coast. (Folio 884.) The Southern terminus of that line was about 100 miles north of San Francisco. Mr. Payson was asked, (Folio 885):

> "Q. What was the purpose of that acquisition by the Santa Fe?
>
> A. It was the nucleus of a feeder which would tap the Mendocino timber country and be tributary to San Francisco.
>
> Q. That is, you bought that line with the intention of making it the nucleus of a line of roads to go up from San Francisco to tap the timber country?
>
> A. A part of a line of roads to go north to tap the timber country.
>
> Q. And at that time the Santa Fe expected to construct that line itself?
>
> A. It did."

He further said that the line near Eureka was to be part of a through line to San Francisco, of which the Fort Bragg & Southeastern would be a feeder. (Folio 885.) This is not merely a matter of local importance as the timber supply of a large part of the United States now comes from California.

The result of the negotiations of Mr. Morawetz and Mr. Harriman, which included the Phoenix & Eastern in Arizona, and the railroad situation north of San Francisco, was the making not only of the contract heretofore referred to, relative to the Phoenix & Eastern, but of the contracts 75 to 78, (Folios 915 to 955), by which all of these various roads in northern California were put into a new corporation called the Northwestern Pacific, the stock being evenly

divided between the two companies, and trusteed with the defendant Farmers Loan & Trust Co., the control to alternate annually between the Santa Fe and the Southern Pacific. See Article 2, Exhibit 78, (Folio 942.) Therefore all competition was eliminated in that region of northern California, and the two lines, instead of each building into the country, proposed to build one line, with a provision for alternate control, but the Southern Pacific having thus secured control of the situation we observe the usual result, namely—no road whatever has been constructed.

Negotiations for Surrender of Santa Fe to Union Pacific Demands.

Mr. Morawetz, at Folio 1855, said:

> "Some time in the autumn or winter of 1902 negotiations were begun for the adjustment of the differences existing between the Southern Pacific Company and the Atchison with regard to conditions in Northern California and in Arizona. *Mr. Harriman objected quite strenuously to our construction of the Phoenix & Eastern line, because he considered that an invasion of territory properly tributary to the Southern Pacific system. Mr. Harriman desired us to sell to him the constructed part of this Phoenix & Eastern road, and to retire from the territory south of Phoenix.*"

It appears that negotiations continued, and while they were in progress, and about September, 1904, Mr. Morawetz was informed by Mr. Harriman that he and his associates had purchased about 300,000 shares of Atchison stock, and asked for representation on the board of directors as we have heretofore shown. (Folio 1859.) So the three matters were all under discussion

and settled at the same time. The Southern Pacific maintained its monopoly in southern Arizona. It prevented the construction of a competing line in northern California, over which the great timber production of that territory might be transported to the markets of the world in competition with it, and it succeeded in getting two of its directors upon the board of the Santa Fe; and although Mr. Morawetz states that the arrangements for the elimination of this competition had been agreed to before, it is an interesting fact, that the resolution authorizing the same was passed on December 12th, 1905, at a meeting of the board of directors at which the defendants Frick and Rogers were present, and at the same meeting the agreement to turn over the Phoenix & Eastern to the Southern Pacific was also approved. (Folios 1579-82.) At the same meeting, the Santa Fe entered into the contract, Complainant's Exhibit 104, (Folios 1585 et seq.), which provided for the sale of the Phoenix & Eastern, and for the construction by the Southern Pacific Co. upon demand, of the low grade line of railway to Deming, mentioned by Mr. Murphy, with a provision that upon the terms therein set forth the Santa Fe Co. should have the right for 15 years to run its *through* trains thereon. The Santa Fe on the other hand, agreed upon demand, to construct the low grade line which it actually had under construction, and has now finished through by Bengal, crossing the Colorado River at Parker, which Mr. Murphy mentioned as a part of the low grade line, giving the Southern Pacific running rights over it. This agreement was of no value to the Santa Fe, because when the line was built through to Deming, it would not have had the right to do local business into the rich region of southern Arizona at all, as it would if it had constructed the line itself, but only

to use it for through business, being put to large expense for interest and maintenance on the same.

Mr. Morawetz testified that the Santa Fe had never made any request of the Southern Pacific to build that line, and that he was confident it never would. (Folio 1882.) He also said that if the Southern Pacific should use the Santa Fe's line by Bengal when finished, they would get a much better grade for their northern California business, than the present line of the Southern Pacific. (Folio 1888.) Thus there was an agreement for the elimination of competition. The Santa Fe had its line built to Dudleyville. It could have built from there to Benson for a small sum—two millions of dollars—and it was Mr. Morawetz's opinion that the road would eventually be built to Benson, as shown by his testimony at Folio 1873:

> "When we took up the Phoenix & Eastern, it was with an understanding with Mr. Murphy that we would cause the line to be built as far as Dudleyville, and that we were not ready to go any farther, and I remember that Mr. Ripley did not think it advisable to go to Benson, while I was disposed to go to Benson if we went anywhere.
>
> Q. Well, you went somewhere, didn't you?
>
> A. We went to Dudleyville.
>
> Q. You were overruled in that, were you? If so, by whom?
>
> A. Hardly overruled, no. I was inclined to think that sooner or later the line would be extended to Benson anyhow.
>
> Q. That was your idea?
>
> A. After being built to Dudleyville.
>
> * * * * * *
>
> Q. You knew the Southern Pacific had a line over as far as Mesa along the line of the Phoenix & Eastern?
>
> A. Yes.

Q. When was it that Mr. Harriman came to you and objected to the invasion of his territory? Was that after the line was completed, or before?

A. Oh, before it was completed; while it was in the course of construction.

Q. Was that at the time rocks were being thrown down on the tracks, as Mr. Murphy says, or was it before that?

A. Oh, it was before.

* * * * * * *

Q. So when you found you couldn't agree otherwise, he tried the 'rock' treatment, did he?

A. I remember stating to him that I did not think such action would facilitate the negotiations and that it certainly would not influence me favorably to agree to his demands.

Q. Mr. Morawetz, if the line had been extended to Benson, as originally contemplated when Mr. Murphy proposed to build it, you would have connected there with the El Paso & Southwestern, would you not?

A. Yes.

Q. The El Paso & Southwestern is an entirely independent line, isn't it?

A. I believe it to be. * * *

Q. That line reaches El Paso, doesn't it?

A. Yes.

Q. And there connects with the Mexican Central, doesn't it?

A. Yes, sir.

Q. Running to Mexico City?

A. Yes.

Q. And connects with other lines to the east?

A. Yes.

Q. The Texas & Pacific?

A. Yes.

* * * * * *

Q. The only thing that was left, in order to give an outlet and an interchange between Arizona and the country to the west and the country along the

El Paso & Southwestern and down into Mexico, was the construction of this short line from Benson to Dudleyville, as long as the Santa Fe owned that road, isn't that true?

A. Yes.

Q. And was that the invasion of Southern Pacific territory which Mr. Harriman objected to?

A. No, he did not specify. It was generally extending our mileage south of Phoenix.

Q. He thought that there should be a wall erected at Phoenix, and you should stay on your side of the fence and he on his side of the fence, isn't that right? Or didn't he propose to stay on his side of the fence?

A. I should have proposed it if he had not.

Q. Well, that was his suggestion, was it—that you should not go south of Phoenix?

A. No, really all that I can remember is that he objected to our construction of this line south of Phoenix on the ground that we were going into territory which was properly tributary to Southern Pacific lines." .(Folios 1874-5.)

After further testifying that the Southern Pacific then had a line reaching as far as Mesa in the rich fruit growing district, he gave the following significant testimony:

"Q. Was there, then, any substantial reason why that line should have been acquired by the Southern Pacific except to stop any possible competition in that territory and to prevent a new outlet?

A. I do not doubt that the Southern Pacific wanted to buy the line, and did buy it, for the reason which was assigned, namely, that they did not want the Atchison to extend into that territory.

Q. Well, that is another way of stating that they did not desire competition from any other line in that territory, isn't it?

A. No. They did not want that territory to be occupied by the Atchison, because if there was any-

thing in the territory for a railroad company, they wanted it for themselves.

Q. That is not entirely the whole truth, is it, Mr. Morawetz? If your line had been extended down to Benson, it would have produced competitive conditions, certainly, between the country to the east and Phoenix, wouldn't it?

A. Oh, I agree.

Q. Yes.

A. Yes, I agree. I thought you meant the line to Dudleyville.

Q. No, I am speaking of the whole proposition.

A. The whole proposition, yes.

Q. Getting control of the proposition?

A. No doubt.

Q. *So that the real reason why Mr. Harriman desired to get that line into their hands was to prevent possible future competition through a line that you might run down to Benson?*

A. *I think that is true.*" (Folios 1878-9.)

Mr. Morawetz, on cross-examination, repeated his statenent at Folio 1906, in the following words:

> "I think the main reason, so far as I knew, was a desire to keep the Atchison out of that territory."

Therefore the people of Arizona who had given the right of way for the Phoenix & Eastern, who hoped for competition with the Southern Pacific, were sold out and betrayed by the Santa Fe as part of the same deal by which northern California was bottled up, and two Union Pacific directors went on the board of the Santa Fe. The testimony of Mr. Morawetz and of Mr. Murphy should be read in full in order to fully appreciate the iniquity of this proceeding. It had the usual effect, and the territory that would have been opened up, suffered the blight which has accompanied Southern Pacific and Union Pacific ownership in

Oregon. The line was built to Dudleyville by the Santa Fe. It remains at Dudleyville. The line to Benson has not been built. The line through the Gila Canyon to Deming has not been built, and probably never will be. Professor Douglas testified that he knew the San Pedro valley between Dudleyville and Benson; that it was a highly mineralized country, where the mines have never been developed, partly because of the lack of cheap transportation. (Folio 1915.) Mr. Murphy testified (Folio 1681), that when they started to build the road through to Benson, there was a very large amount of money put into that region, and a large amount of development was started in opening up mines, prospecting and getting ready for large operations. Again, at Folio 1717, he says he knows there was considerable activity started in between Dudleyville and Benson, as a result of the anticipated road; that he had a great deal of correspondence with mine operators and owners of mines at the time he was building; that there are mines there at present, and that their only outlet is either by wagon to Dudleyville or by wagon to Benson. He then testified:

"Q. Are there any mines between Dudleyville and Phoenix on the Phoenix & Eastern?

A. A great many.

Q. What kind of mines?

A. Gold, silver, copper and lead; principally copper there; the principal mines are copper.

Q. Where are the ores from those mines smelted?

A. Well, I don't know as there is very much going out of there right now.

Q. Where have they been when they were in operation?

A. Well, before they closed the Humboldt smelter, before we sold the road to the Southern Pacific, they came to us on the Santa Fe, Prescott & Phoe-

nix, and went up to Prescott, and went out to the Humboldt smelter, and were smelted there.

Q. Where is the Humboldt smelter?

A. It is on a branch of the Santa Fe, Prescott & Phoenix road, north of Prescott.

Q. What smelters are there, if you know, along the line of the El Paso & Southwestern?

A. Well, the principal smelters are the smelters of the Copper Queen Company at Douglas, and then the Calumet & Arizona have their smelting plant there also.

Q. Are there any smelters at El Paso?

A. Yes, some very large smelters there; the American Smelting & Refining Co." (Folios 1717-18.)

At Folios 5587 to 5589, appear Complainant's Exhibits 195 and 196, showing the rates on ore from all of the stations on the Phoenix & Eastern to the Humboldt smelter, in effect when the Santa Fe owned the line, and the rates put in force by the Southern Pacific when it acquired control. These exhibits show that the rates have practically doubled, so that the shipments naturally ceased, as Mr. Murphy testified. The Government of the United States is spending vast sums of money in irrigating this region, the Roosevelt dam project being one of the largest in the world. The territory that has been brought under water by the completion of the project, is that which was abandoned to the Southern Pacific by the Santa Fe when it turned over the Phoenix & Eastern road. Therefore the Government has been spending money for the purpose of aiding and perpetuating, and making more profitable a monopoly created in violation of the statutes of the United States.

Division of California Fruit Traffic.

It is not only in Northern California and in Arizona that the close relations of the Santa Fe and the Southern Pacific have eliminated competition. In southern California there is substantially no competition for the enormous citrus fruit traffic.

Mr. Bissell, Assistant Traffic Manager of the Santa Fe system, residing in San Francisco, was asked with reference to the handling of the fruit crop of southern California. He was naturally an unwilling witness, but the situation was fairly well developed. (Folio 983.) He was asked whether his company had been actively at work trying to get business for their lines in competition with the Southern Pacific, and answered:

> "A. As to that, I could not say. I do not think we do, because the main effort we have had for the last three or four years has been to get our cars back fast enough to take care of the fruit that was offered."

He further testified, (Folios 983-4):

> "Q. Mr. Bissell, the Southern Pacific and the Santa Fe lines are very close together, are they not, between San Bernardino, we will say, and Los Angeles?
>
> A. Yes, sir.
>
> Q. And there is a large amount of fruit that might easily be procured by one company as against the other by active solicitation. Is that not true?
>
> A. Well, that is true in a measure, but most of that fruit is controlled—the routing of most of that fruit is controlled by the location of the packing houses. If an orange shipper had a packing house on the line of the Southern Pacific he would not

ship over our line unless there was some unusual condition of affairs. If the Southern Pacific had no cars he might haul his fruit over to our line.

Q. Do you make any effort to get fruit that belongs to packers on the Southern Pacific track by holding out the offer of efficient service, or facilities, or anything of that sort?

A. Why, we have at times done so, Mr. Severance.

Q. How long ago did you do that?

A. I could not tell you exactly.

Q. You do not do it now, do you?

A. I don't think so. We haven't equipment enough. We have always had a hard time to get that equipment back to take care of the business originating on our own tracks."

His attention was then called to a statement made by Mr. Stubbs in Chicago, testifying before the Interstate Commerce Commission in 1902, in which Mr. Stubbs stated that there was an understanding that so far as the orange business was concerned, the Southern Pacific and the Santa Fe would endeavor to work an equal division of that traffic, and that that arose from the fact that it was about so divided in this proportion on their local lines in California, about 50% being produced on the lines of the Santa Fe, and about 50% on the lines of the Southern Pacific. Mr. Bissell was asked whether that agreement was still in force, and testified:

"A. I don't—the general policy is still in force." (Folio 986.)

He was unable to state the amount of business that the San Pedro road got. Mr. Bissell also testified that the schedule of time they endeavored to maintain on shipments of oranges from the valleys of southern California to Chicago

was eight days, but he was unable to state what time was made by the Southern Pacific or the Rock Island or the San Pedro road. (Folio 989.)

Mr. Phillips, Traffic Manager of the California Citrus Union, Los Angeles, and of the Earl Fruit Co., Sacramento, whose company ships about 20% of the Southern California output, testified that of the packing houses of his association, 49 were on the Southern Pacific, 42 on the Santa Fe, and 3 on the San Pedro. (Folio 1245.) On the question of speed in shipment, he testified, (Folio 1243):

> "A. Well, oranges are a perishable product, and the quicker we can get them to their destination and sold and our draft paid, the more money we are likely to have for our growers, and that is beneficial to them and to the industry in southern California. If we can get a car into Chicago in seven days and delivered to a consignee, and he pays his draft, and it should go to pieces on the eighth day that loss would be with him and not with the California growers. Therefore every day counts on an orange shipment, or any other perishable goods."

He had previously testified that there were some very fast shipments over the San Pedro road the year before, and he was asked how long that train was kept in service. He said he did not remember the exact number of trains. He thought there were only four or five of them, but that they made as fast time as 5½ days to Chicago on one train. This, it will be seen, is two and a half days faster than the time made ordinarily by the Santa Fe, as testified by Mr. Bissell.

Mr. Woodford, General Manager of the California Fruit Growers Exchange, handling about 47% of the entire fruit

crop of southern California, as he stated at Folio 1246, testified that they had only four or five packing houses on the San Pedro line. He makes, at Folio 1248, the following very significant statement:

> "I think, according to the published reports of the railroads, that the Salt Lake last year had about 10 per cent of the citrus fruits traffic, and the Santa Fe and the Southern Pacific each about 45 per cent. But that is not our associations' line of business alone."

Again, at Folio 1249:

> "Q. Of this 10 per cent that the Salt Lake moved last year, of the total shipments, can you state whether the whole or a large percentage of that originated on their own rails?
>
> A. I think a very small part of it originated on their own rails.
>
> * * * * * *
>
> Q. What percentage of the packing houses in this district are on the Santa Fe rails?
>
> A. I can't tell you that. About 60 per cent of all the fruit that is packed in warehouses originates, I think, on the Santa Fe.
>
> Q. That is what I want to get at.
>
> A. Some packing houses may pack more fruit than others.
>
> Q. I understand that. But the fact is that about 60 per cent out of the total of the citrus fruits raised here is tributary to the Santa Fe road?
>
> A. Yes, sir.
>
> Q. Still, when it comes to moving it to market, last year the Santa Fe moved about 45 per cent of the total shipments, the Southern Pacific about 45 per cent, and the Salt Lake about 10 per cent?
>
> A. Yes, sir; approximately, according to their published reports."

There could not be a more striking evidence of the influence of the Union Pacific organization over the Santa Fe than the foregoing. The citrus fruit traffic is very important and lucrative; and still, with 60% of the fruit tributary to the Santa Fe and only 40% to both the Southern Pacific and the San Pedro route, the latter, having almost no packing houses along its line, the two subsidiaries of the Union Pacific ship 55%, and the Santa Fe only 45%, thus dividing 15% of the business which it should control, under the testimony of Mr. Bissell between the two rival roads.

Fast Fruit Trains Put on by San Pedro and Rio Grande Abandoned Upon Demand of Southern Pacific and Santa Fe.

Mr. Wells, General Manager of the San Pedro, Los Angeles & Salt Lake road, testified that the total shipment of citrus fruits out of that territory was about 25,000 car loads per year, and the total over his line 2,330, a little under 10 per cent. He was asked about the fast train service made for a time by his road, and testified, (Folios 1227-8):

> "Q. It has appeared here by some testimony, Mr. Wells, that for a time your road made some fast shipments of citrus fruits—about a year ago last winter. (His testimony was taken before the Interstate Commerce Commission February 8, 1907.) You recall that fact, do you not?
>
> A. Yes, sir.
>
> Q. What was the time made to Chicago?
>
> A. Something like six days, as I remember, or six and a half.
>
> * * * * * *
>
> Q. What lines of road did those trains move over?

A. They were turned over to the Rio Grande at Provo and Salt Lake.

Q. And who took them after the Rio Grande? The Burlington?

A. They took some, I believe; I don't know."

Again he testified, (Folios 1278-9):

"Q. Somebody or other was responsible for starting this six day service. Now, was that six day service abandoned through the request of the Rio Grande or the C. B. & Q.?

A. It worked itself out, as a matter of fact.

Q. Just answer my question. Did either the Rio Grande road or the C. B. & Q. request the abandonment of that through service, that fast service?

A. No, sir; they did not. * * *

Q. Did the Southern Pacific people make any suggestions to you about that train—about those trains?

A. Yes, sir; they did. They protested.

Q. Yes, that is just what I thought.

A. So did the Santa Fe."

And after stating that their road got out of condition, he testified in answer to Commissioner Lane, who inquired as to how long these fast trains continued, that they ran them during January and February, and when asked when he got the protests from the Southern Pacific and Santa Fe, stated that he thought it was when the first train was landed in Chicago. He then gave the following amusing testimony:

"Q. You ordered them to be stopped yourself, either when you were east or when you were here?

A. I didn't order them to be stopped.

Q. Did you not? Who did order them stopped?

A. They stopped on account of disability on our part to keep the time up.

Q. Were there any orders given for them to be stopped at all?

A. Not by me.

Q. By anybody on the road?

A. Not that I know of.

Q. Just stopped of themselves?

A. Stopped of themselves. * * *

Q. When the bad times were over, why did you not start those trains up again—bad times on your road, I mean?

A. Well, the bad times are not over yet.

Q. They are not over yet?

A. Not quite, no, sir; not by any means." (Folios 1230-31.)

At Folio 5649 at the hearing of this case in New York on June 10th, 1909, the following statement appears in the record, made by counsel for the defendants:

"It is stipulated that the fast train service for citrus fruit from Los Angeles to Chicago, referred to in the testimony of J. Ross Clark and R. E. Wells, taken before the Interstate Commerce Commission in 1907 and read into the record in this case, has never been resumed."

From this it is apparent that the citrus fruit business, both as to the quantity to be hauled by the Santa Fe, the Southern Pacific and the San Pedro, which as we have shown in another portion of this brief, is a part of the Union Pacific system, is a matter of understanding; that the business is apportioned, about 10% to the San Pedro, and 45% to each of the other lines, and that there is no competition in train service. It is significant to notice that the fast train service which for a time was of such marked benefit to the parties growing this enormous output of citrus fruits, was not over the Union Pacific, which is the short line from Salt Lake to the Missouri River, but was over the

rather roundabout route of the Rio Grande and the Burlington, a route which, as has been testified, is some 300 miles longer from Salt Lake to the river than the Union Pacific line, but the Santa Fe protested, and the Southern Pacific protested, and the fast service stopped "just stopped," as said by Mr. Wells; stopped in the winter of 1906, and has remained stopped to the summer of 1909.

Division of incoming cargoes from the Orient between the Southern Pacific and Santa Fe.

Since a date even prior to the entry of the Union Pacific directors into the Santa Fe board and the purchase of Santa Fe stock by the Union Pacific, there has been a division of all incoming traffic from the Orient, received at San Francisco by the boats managed by Mr. Schwerin, and there is no competition whatever for this business. The matter has recently, however, been placed upon a more definite basis. The Santa Fe conducts its Oriental traffic in connection with the Pacific Mail and the allied lines controlled by Mr. Schwerin. Mr. Schwerin testified that neither the Southern Pacific nor the Santa Fe have maintained any agencies in the Orient soliciting business, but when a ship comes in he turns over the whole cargo to the Southern Pacific, and when another ship comes in he turns the whole cargo over to the Santa Fe. (Folio 2734.) Mr. Schwerin's testimony was given in January, 1907, and he said that that arrangement of giving alternate carloads to the two lines had been in force for about six months. Previous to that time all of the freight was turned over to the Southern Pacific Co. and they divided it with the Santa Fe under an understanding with the steamship company that there should be a fair division somewhat in proportion to the amount of outgoing freight received by the steamship company from the Santa

Fe and the Southern Pacific respectively. (Folio 2737.) The change in the method of handling the traffic, Mr. Schwerin testified, came up in relation to the steamship company routing the overland freight, at a conference between himself, Mr. Luce, General Freight Agent of the Southern Pacific Co. at San Francisco, and Mr. Chambers, General Freight Agent of the Santa Fe at San Francisco. He said:

> "A. We discussed the question and concluded the best way to do, instead of apportioning out of the ship any special cargo, for instance, a cargo that might be served best by the Santa Fe lines, to try to aggregate that cargo out of the ship, that we would turn over the whole cargo to the Santa Fe, and let them bill it out as they saw fit, and then turn over the whole next cargo to the Southern Pacific, and let them bill it out as they saw fit.
>
> Q. Mr. Schwerin, did you three gentlemen agree on that?
>
> A. We did.
>
> Q. And you have since carried out that agreement?
>
> A. As far as I know.
>
> Q. Up to this date?
>
> A. As far as I know, it has been carried out.
>
> Q. So that you give those instructions to your subordinates?
>
> A. Yes, sir.
>
> Q. And that was satisfactory to the two roads with whom you made the trade?
>
> A. As far as I know, yes, sir." (Folios 2743-4.)

At Folio 5646, a stipulation was put in the record, that Mr. Schwerin, who was to have testified again, but had been obliged to leave New York, would, if present, testify among other things, that there has been no change in the routing of the homeward business as between connecting

rail lines at San Francisco. This stipulation was made on June 10th, 1909.

The various dealings for the suppression of competition by the Santa Fe and the Southern Pacific and Union Pacific companies clearly demonstrates that they are so related to each other, and the business they handle is of such a character, so susceptible to competition, the territory through which they run is so new and the necessity of railroad development so great, that there is no doubt that Mr. Morawetz, the defendants' witness, was right when he said that it was undesirable, if legal, for the Union Pacific to own any stock of its competitor, the Santa Fe. And common directors and such ownership of stock necessarily can lead to but one result, namely, to the continuance of the suppression of the competition that should naturally exist between these two systems, which elimination or lessening of competition is to the detriment of the public as well as in violation of law.

PRACTICAL DESTRUCTION OF PANAMA ROUTE.

As we have shown in discussing the Trans-Pacific business, the Southern Pacific owns a majority of the stock of the Pacific Mail Steamship Co., which operates in connection with the Panama Railroad on business between New York and San Francisco. This is a very old line. Mr. Rossbottom, Assistant to the Vice President, and Secretary of the Panama Railroad Co., and custodian of its records, and who has been with the company a long time, testified that the Panama Route was the first transcontinental route, and was opened in 1850; that the Pacific Mail formed a part of that route as far back as 1872. Complainant's Exhibit 181 (Folios 5494 et seq.) is an original contract made between the Pacific Mail Steamship Co. and the old Union Pacific Railroad Co. in 1872. We have heretofore referred to this contract. It speaks of the natural competition between the Union Pacific and the Pacific Mail in relation to the transportation of merchandise and other freight between the cities of San Francisco and New York, and arranges for a control of the rates.

Exhibit 182 (Folio 5503), is an agreement between certain railroads and the Pacific Mail, dated the first of October, 1889. Among the parties to this are all of the railroad defendants here (except the San Pedro) or their predecessors. By this agreement a guaranty of $75,000 a month earnings was made by the railroad companies, in consideration of which the Steamship Co. agreed to permit the railroads to fix the rates on which all through freight between New York and San Francisco and all passengers, should be carried. It is unnecessary to go into the matter in detail. It appears by the testimony of Mr. Schwerin, as we have shown, that shortly prior to the acquisition of the control

of the Southern Pacific by the Union Pacific, the former had purchased a majority of the stock of the Pacific Mail. Contracts have been made from time to time between the Panama Railroad Co. and the Pacific Mail Steamship Co., notably Complainant's Exhibit 179 (Folio 5451), dated December 16, 1895, and the supplemental contract, Complainant's Exhibit 180 (Folio 5483), made June 11, 1902.

There are certain other lines in connection with which the Panama Railroad operates, but not on business between ports in the United States on the two oceans. Mr. Rossbottom testified, (Folio 5444), that goods cannot be shipped from New York to San Francisco by way of Panama in other than American bottoms, and that there was no other line of boats running from Panama to San Francisco of American register except the Pacific Mail. It appears by the table (Complainant's Exhibit 177, Folio 5442), showing the tonnage over the Panama Route between New York and San Francisco, from 1898 to 1908, that in 1901 there was a substantial increase in the amount of tonnage. Mr. Rossbottom explained that that was due practically to the fact that the Panama Railroad was operating its own line on the Pacific coast until the contract of 1902 was made effective. On the 12th of January, 1905, notice was given by the Panama Railroad Co., which had been acquired by the United States Government, electing to terminate its contract with the Pacific Mail on the 12th of July, 1905, but business has since been conducted practically on the basis of the contract of 1902, with the exception that the exclusive privilege given to the Pacific Mail to operate between San Francisco and Panama on through business, was cancelled, but that cancellation was of no importance, because there is no other line operating. (Rossbottom, Folios 5444-45.)

It will be observed by this table that in spite of the extraordinary growth of the west and the enlarged interchange of business between San Francisco and New York, the tonnage over the Panama Route westbound has dropped from 43,455 tons the year that the Panama Railroad had its own ships on the Pacific, to 23,258 tons in 1908, and that when operating with the Pacific Mail, there has been a steady decrease from 1904 down. On eastbound tonnage from San Francisco to New York traffic has dropped from 42,086 tons in 1901, to 15,162 tons, and from 1904 down, there has been a decrease of substantially 50 per cent.

A complaining letter from Mr. Schwerin appears in the record as Complainant's Exhibit 178, (Folio 5446), in which he very strenuously objects to the minimum rate provided for in the contract, which had been cancelled, but which has been treated as a working agreement since. Mr. Rossbottom said that Mr. Schwerin demanded of the directors of the Panama Railroad a net return of $5 a ton between Panama and San Francisco, over and above all charges. (Folios 5449-50.) It appears that substantially the only change instituted by abrogating the contract, was that since 1905, the Pacific Mail has had some competition in connection with the Panama Road on business for Central America and Mexican ports. (Folio 5511.) The Pacific Mail chafes under this competition. The Panama Railroad Co. owns the ships forming the part of this route on the Atlantic seaboard. Some correspondence between Mr. Schwerin and Mr. Drake, Vice President of the Panama Road, appears at Folios 5514 to 5525.

Mr. Rossbottom called attention to the fact that under the contract which has been treated as the basis of operation since its cancellation, the Pacific Mail had the right

to make rates from San Francisco or Pacific coast points to New York, but that the Panama Railroad might insist upon its establishing as low a rate as $8 a ton. On cross-examination counsel asked if the eight dollar rate was not demanded in order to give the Panama ships a northbound load from Colon, and he replied that it was. He was then asked if that was not an extraordinarily low rate for business between San Francisco and New York, and replied that it was not; that when the Panama Railroad operated its own line, it established rates as low as $6.00 a ton from San Francisco to New York. That was in 1894 or 1895. (Folio 5543.)

Mr. Rossbottom also said that the eight dollar a ton rate mentioned in the correspondence only applied eastbound, and that the westbound rate was figured on a percentage below the rates of the transcontinental railroads. that the westbound rates average about the same as the American & Hawaiian Steamship Co. (Folios 5550-51.) *The practical operation of this line is to make it substantially no competitor. This is because of the poor service given by the Pacific Mail, and the inferior character of its boats.* Mr. Scott, one of the leading merchants of San Francisco, President of the Pacific Hardware & Steel Co., testified (Folios 4922-3) that the rates on the Panama Route are at a fixed differential as compared with the all rail rate, and after stating that the Pacific Mail ran on the Pacific side of the Isthmus, he was asked as to the charactor of their boats, and said that they were what is generally called a lot of tubs, and have been for some time, and that there is no comparison between their ships and those of the American-Hawaiian line, which is first-class, up to date, with quick ships and proper facilities for handling freight in and out.

Mr. Connor testified that he was the agent of the Panama Railroad Co. in San Francisco for some time, and when the Panama Railroad was competing for the same traffic with the American & Hawaiian Steamship Co. after it was put on, they were both working business to Portland, and the O. R. & N. boat line handled the American-Hawaiian business from San Francisco to Portland at a less rate than they charged by the Panama Line, which worked against the Panama Route.

This is another example of the competition that existed between the Union Pacific system and the Southern Pacific system prior to the merger. (Folio 4827.) This was brought out on cross-examination of Mr. Connor. In connection with his testimony there was introduced Complainant's Exhibit 169, the contract between the Panama Railroad Co. and the Pacific Mail Steamship Co. dated June 11, 1902. (Folio 4789.)

Mr. Connor testified that when he represented the Panama Road, the Pacific Mail Steamship Co. made ten or eleven stops between San Francisco and Panama at Central American and Mexican ports, but made no other port in the United States except San Francisco; that he had difficulty in getting space on their boats for the traffic he was able to secure; that the ships had been in service a good while; that they are still in service, except as they have been wrecked; that in his day they were fifteen or twenty years old, some of them older; while they have since bought some boats, he does not know of their buying any new boats. (Folios 4780-81.) Owing to the lack of capacity of these boats, freight would accumulate on the Isthmus west bound. (Folio 4782.)

Mr. Williams, now the agent of the Panama Railroad Co. in San Francisco (Folio 5028), when asked as to the class of boats used by the Pacific Mail in the Panama service, said that they were considered out of date. They leave San Francisco every nine days, make nine or ten stops, *and their average time to the Isthmus is 30 days,* and they discharge cargo from New York all along the Mexican and Central American coast coming north. At Folio 5029 he said the Panama Railroad steamers on the other side are very much larger and superior to the Pacific Mail boats, and that they have a six-day sailing, and make the trip from New York to Colon in six days. He further testified that the average time between New York and San Francisco by the Panama Route was forty-five days, while the average time of the American-Hawaiian line, which operates across the Isthmus of Tehuantepec was about thirty days. That of the forty-five days, not exceeding ten or twelve days is consumed in the transportation from New York to Colon and across the Isthmus of Panama. When the Panama Route had its own steamers on the Pacific the ordinary time between New York and San Francisco was between thirty and thirty-five days. (Folio 5030.)

Mr. Melvin, Traffic Manager of the California Fruit Growers' Association, says that they ship very little by the Panama Route, much more by the American-Hawaiian Line, for the reason that it takes longer in transit by the Pacific Mail, and that their goods have to be corner-strapped to strengthen the boxes, when going by the Pacific Mail which is not required by the American-Hawaiian Line. (Folios 5137-8.)

Mr. Chapman, at present the Traffic Manager of the Pacific Hardware & Steel Co., testified that from Pittsburg and from the New England states, the time of transit to San Francisco by the Panama Route was 65 or 70 days; part of that includes getting the goods to New York, and the delay in New York; that the time of transit after the steamer leaves New York is about 45 days. (Folio 5165.) He further testified at Folios 5166 and 5167, that the American-Hawaiian boats were large steamers with a carrying capacity of about 12,000 tons, and were modern vessels equipped to handle large and heavy pieces of material such as long structural iron and steel. Pacific Mail boats were much smaller; had been in the service much longer; there are many classes of freight they cannot handle, and they are not equipped for the loading and unloading of goods as are the ships of the American-Hawaiian Line. They cannot take long lengths of structural material or large sized plates or large, heavy blooms or billets. He further said (Folio 5166):

> "Of course you understand that their boats very often spring a leak coming up the coast, and in figuring on shipping goods by that route you have got to take that into consideration, figuring your salt-water damage as against the American-Hawaiian route.
>
> Q. Is that a usual thing for the Pacific Mail boats to spring a leak coming up the coast?
>
> A. Well, I might say they have had bad luck lately; we have had a good many cases of damage from that cause. I can call to mind now that the last two or three shipments of plate iron that they had in were damaged by salt water. When I took it up with them I was advised that the vessel met with heavy weather and sprang a leak."

This is a very fine showing for an organization that prides itself, so far as its rail lines are concerned, on having them in good physical condition, with proper equipment. The defendants carefully refrained from offering any testimony as to the physical condition of the Pacific mail boats or as to expenditures upon them. The explanation is very simple. It is for the advantage of the rail lines to destroy the Panama Route, so far as possible, and discourage shipments by that route. Therefore, we have the old leaky lot of tubs, with no modern facilities for handling traffic, occupying a long time in transit, and the manager objecting to low rates. This Panama situation is merely an incident to the general scheme of monopolizing the transcontinental business in the hands of the Union Pacific Railroad system.

EFFECT OF CONSOLIDATION UPON THE PUBLIC INTEREST.

There are certain natural results that inevitably flow from the establishment and maintenance of a monopoly such as we have here presented. The purpose of a monopoly is to secure as large a profit as possible to the parties who control it, without reference to the public interest, except in so far as consideration of the public interest will itself tend to enlarge profits. Neither the law nor the common sense of mankind recognizes the existence of a *beneficent* monopoly. This whole record bristles with evidence of the desire of the defendants to use their power for their own profit without recognition of the public nature of the enterprises with which they have been connected. There is nothing singular in this. The defendants do not differ from other persons who have acquired a monopoly of some article that the public must purchase or consume, and it is because of the inherent selfishness of monopoly and the great loss suffered by the multitude for the enrichment of the few, that courts and legislatures have for centuries frowned upon the same. At page 18 of this brief we called attention to the language of this court in the opinion in the Standard Oil case enumerating three evils resulting from monopoly, and stated that we would show that the transactions of the defendants under investigation in this action have resulted in each of the same. They may be briefly stated as follows:

a. Economy in operation, resulting in poor service.

b. Utter failure to extend the lines of road and build branches for the development of territory which, but for the amalgamation, would have been naturally competitive territory.

c. Increases in rates in spite of the fact that the tendency of railroad charges in this country is downward.

We will discuss these in their order:

a. THE CONSOLIDATION HAS TAKEN AWAY INCENTIVE TO PROMPT SERVICE.

Mr. Knight testified that previous to the consolidation, when he was General Agent of the Union Pacific in Chicago, they had excellent service. He said:

> "We have taken certain classes of freight out of here and, of course, with effort to make time, put it to the dock in San Francisco in five days. But six and seven days was pretty regular service for us." (Folio 3011.)

Mr. McCarthy, in connection with his testimony, introduced a rate card, Complainant's Exhibit 151. (Folios 3868-3902.) This showed that on October 1, 1900, the regular time of the fast freight schedule from the Missouri River to Ogden was 54 hours, and he says that the corresponding train, which is the fastest freight train that the Union Pacific now runs from the River to Ogden, is 100 hours and 45 minutes. This is in spite of the fact that the Union Pacific management has shortened the line by 40 miles, and has eliminated a lot of curves and grades, as was triumphantly declared by the late Mr. Harriman in his testimony which was read into the record at Folios 1320-21. It is significant to notice, however, that Mr. Harriman did not claim that those expenditures had resulted in quicker service. He merely said:

> "Those improvements, which cost all these millions of dollars, have enabled us to develop a larger traffic, permit a greater traffic to go over those lines and to reduce the percentage of the cost of operation."

It is undoubtedly true that it has reduced the cost of operation and made larger profits for the stockholders of

the Union Pacific Railroad, but that is not of much interest to the patrons of the road who pay the charges which have enabled the Union Pacific to establish a credit upon the basis of which it has bought railroad stocks substantially all over the United States and to a great extent destroyed competition in the trans-Missouri territory.

Mr. McCarthy, when testifying that as a competitive measure on Portland business, a train was put on which made the run from the River to Ogden in thirty-two hours, was asked whether it was of advantage to the jobbers of Salt Lake to have fast freight trains to bring in their goods from the east, and he said it certainly was, and that it was a disadvantage to have slow trains. (Folio 3912.)

There is no excuse for this diminution in service.

Mr. McCarthy further stated that the Union Pacific now did not even make their long schedule. He testified at Folio 3932:

> "Merchandise, package freight, moving less than carload, varies from seven to twelve days in delivery from the time it passes Council Bluffs until it is delivered in Salt Lake City.
>
> Q. In the old days, at the time this faster freight schedule was in force, did they make the time?
>
> A. Very closely.
>
> Q. So it is your experience that they have not only lengthened their time, nearly doubled it, but they do not even make the slower time?
>
> A. That is it."

He further said that the time on carloads from Chicago by the Wabash, Missouri Pacific and Rio Grande is about the same as the Union Pacific. He was asked, on cross-examination, why this slow time was made by the roads, and said:

"A. I have my opinion. On the Union Pacific I should say that the time was lengthened out in an effort to increase the net revenue, increase their train haul. The time of the Gould lines, I think, is due to the deterioration of their property and inability to make better time." (Folios 3930-1.)

Mr. Love, Traffic Manager of the largest mercantile institution in Utah, testified at Folio 4118:

"Q. How is the service of the Union Pacific from the Missouri River in the matter of time (freight service) as compared with what it was ten years ago?
A. It is not as good."

Mr. Romney, a wholesale lumberman at Salt Lake, testified that in his opinion in many instances the time of shipments moving between Portland and Salt Lake are slower than they used to be. In another connection we have called attention to the time that was made into Portland during the rivalry between the two routes. (Folio 4316.)

Mr. Adams testified that his line, the North Bank road, running in connection with the Northern Pacific and Great Northern, makes a freight schedule from St. Paul to Portland of six days, and from Chicago eight or nine days. (Folio 4419.) The distance from Chicago to Portland is about 2,400 miles. The distance from the Missouri River to Salt Lake is about 1,000 miles, and still at the date of Mr. McCarthy's testimony the time was about the same by the northern route to Portland from Chicago that it was from the Missouri River to Salt Lake by the Union Pacific. This testimony makes particularly interesting another statement of Mr. Harriman's, at Folio 1203:

"If we had not had the power to buy the Southern Pacific with the credit of the Union Pacific, the terri-

> tory of the Southern Pacific would have been ten years behind what it is now. If we had acquired the Northern Pacific, the Northern Pacific territory would have been ten years ahead of what it is now."

We will discuss in another connection the question as to what effect the merger of these great systems has had upon the territory tributary to them, but it might reasonably be asked in this connection if the development of the territory served by the Northern Pacific would have been accelerated very much if, instead of the kind of service that line is giving, there was substituted for it the character of service offered by the Union Pacific.

Mr. Harriman further remarked, at Folio 1298, in discussing the great benefits that would have arisen if the defendants could have succeeded in their unlawful design of securing the Northern Pacific:

> "I believe the improvements on the Northern Pacific would have been more drastic, that their equipment and motive power would have been increased more rapidly, and I believe more intelligently. I understand —I am told now that the Northern Pacific has got— is unable to move the traffic tributary to it, and that a large part of its motive power—excuse me—not a large part of its motive power, but a considerable part of its motive power is out of service because of not being in proper condition."

It is a curious fact that, with the Union Pacific in such prime condition, with so much equipment, it is still unable to give service that is at all comparable with that of its unfortunate rival, the Northern Pacific.

Mr. Harriman also paid his respects to this Court in connection with the decision in the case of *Harriman v. The Northern Securities Co.*, in the following language:

> "Then we were forced to take, by the decision of the Supreme Court *unjustly*—it may have been legal—Great Northern which we did not want, and a lesser amount of Northern Pacific that we had deposited with the Northern Securities, and for which we received the Northern Securities stock." (Folio 1265.)

It is a possible assumption that the regret thus expressed, that the defendants' movements were interfered with by the Supreme Court, arose out of disappointment at not being able to substitute for such train service as the Northern Pacific is giving its patrons, the kind of freight movement furnished by defendants.

The defendants devoted a vast amount of time and energy to the preparation of statistics showing that since the amalgamation of these two systems the physical condition of the Union Pacific system and of the Southern Pacific system has been improved. No one disputes this fact, but we fail to see how it has anything whatever to do with the issues in this case.

The public patronizing these lines has chiefly paid for this work. Defendant Kahn testified that the necessary funds to put the Southern Pacific in first-class shape were provided mainly out of earnings. (Folio 7885.) There is no evidence that any securities were sold by the Oregon Railroad & Navigation Co. for the work done upon it.

It is a fact that practically all the railroads in the country have been greatly improved, in many cases built over, in the last ten years. The roadbed has been strengthened, and heavier power and equipment have been installed for the purpose of operating the roads more economically. Mr. Kruttschnitt (Folio 6070), when asked if all the railroads in the country didn't immediately after the panic of 1897, and about the beginning or along in 1900, commence great development in the improvement of their properties, said:

"A. With that as a beginning and up to 1907 it is quite true that the roads did spend a great deal of money.

Q. All over this country, that is true, isn't it?

A. They did.

Q. In other words they spent enormous sums of money in improving their roads, did they not?

A. As a rule, yes."

One reason for this was frankly given by Mr. Kruttschnitt at Folio 6994:

"Q. Is it not a fact that these improvements such as cutting grades, taking out curves, improved larger engines, larger cars, and other large expenditures were made in order that you could handle traffic cheaper and make more money at it at the same rates?

A. Certainly."

He testified at Folio 6998 that by reason of the elimination of curves and straightening of the track, the Union Pacific line from Omaha to Ogden was shortened 40 miles, and the Southern Pacific line from Ogden to San Francisco 50 miles, so that the through line is now 90 miles shorter than it was in 1899 or 1900. He further testified at Folio 7027, that the percentage of cost of operation to earnings on the Union Pacific decreased from 51.59% in 1900 to 48.18% in 1909; and on the Southern Pacific from 64.78% in 1900 to 62.89% in 1909. Complainant's Exhibit 215, p.4994, shows from the reports made to the Interstate Commerce Commission by these railways, that the percentage of cost of operation to earnings has decreased on the Union Pacific from 51.04% in 1900 to 47.24% in 1909, and on the Southern Pacific from 64.21% in 1900 to 60.25% in 1909.

Mr. Mohler said, at Folio 7180, that the Rock Island and Burlington were in better condition than the Union Pacific at the time the improvements on the latter line were commenced, so that it was essential to spend this money.

Mr. Park, the General Superintendent of the defendant Union Pacific Railroad Co., who spent some time on direct examination in dealing with the condition of the Union Pacific back in 1875, said on cross-examination, (Folio 7218), that there are no railroads in the country now, so far as he was aware, in the condition that the Union Pacific then was as to equipment, track and everything. He further said that the Union Pacific at that time perhaps was not quite as well built as some of the other roads that were built simultaneously. In spite of all the money that has been been spent and the excellent physical condition of the road, it was made apparent by the testimony of the defendants' own witnesses that the public has not shared in the benefit of these expenditures.

Mr. Mohler, General Manager of the Union Pacific, introduced in connection with his testimony a table showing the relative speed of freight trains over the country as follows:

On the Union Pacific 9.9 miles per hour between Council Bluffs and Ogden; Council Bluffs to Denver 11.5; on the Santa Fe, Chicago to Albuquerque 12.3; and from Chicago to Kansas City 14.4; Kansas City to Denver 14.4; Great Northern, St. Paul to Seattle 11.8; Northern Pacific, St. Paul to Portland 14.4; Rock Island, Chicago to Denver 14.2; Burlington, Chicago to Denver, 14.4; Chicago, Milwaukee & St. Paul, although a new line, Chicago to Seattle, 12.4; from St. Paul to Seattle 12.3; from Chicago to

Omaha 16.4; from Chicago to Kansas City 16.6, and from Chicago to St. Paul 12.8; Pennsylvania from New York to Chicago, 16.2; from New York to St. Louis 18.3, and from Chicago to New York, dairy products, 15.9; New York Central, New York to Chicago 17.5; from New York to St. Louis 20.4, and from Chicago to New York, dairy products, 17.

See defendants' Exhibit 153, opposite page 4268.

He testified, (Folio 7105):

> *"Q. It appears by these figures that you have just read into the record, that the slowest time made by any merchandise train in the United States, so far as developed by these various lines east and west, that you have read, is on the Union Pacific, from Council Bluffs to Ogden, 9.9 miles. That is true, isn't it?*
>
> A. *Yes."*

And at Folio 7159 he admitted that the business into Colorado common points was highly competitive between his company and the Burlington and the Rock Island, which was partly the reason why the speed of trains to Denver had been recently somewhat increased, but it appears by Mr. Park's testimony at Folio 7229, that even with that incentive the reductions in time to Denver recently made have only got the schedule back to where it was in 1900, and it is a significant fact that this reduction which was from 58 hours to 48 hours, was made in January, 1910, just before the defendants' testimony was taken.

At Folio 7234 Mr. Parks testified that they had recently shortened the time on the Portland train as well as the *Denver train, and explained that on transcontinental traffic to Portland they met the competition of the Northern Pacific and the Great Northern.* The defendant's witnesses

all admitted the truth of the statement made by Mr. McCarthy that the time of the merchandise train from Omaha to Ogden had been lengthened from 1900 to the present time from 54 hours and 30 minutes to 100 hours and 45 minutes. It was claimed by some of the witnesses that the trains when running on the 54 hour schedule did not make their time, but it was admitted by Mr. Park that in the spring of 1909 when Mr. McCarthy's testimony was taken, they were not even making the 100 hours and 45 minutes schedule, but were running six, eight and ten hours late. (Folio 7231.)

Mr. O'Brien, the General Manager of the Southern Pacific and O. R. & N. lines at Portland, testified that their merchandise train made a trifle under twelve miles an hour, which he calls a fast train, although it does not seem to be regarded as fast by the other railroad systems of the country, and he says that is done to expedite the business, and it is apparent from his testimony at Folios 7355 to 7358 that this action is made necessary by Northern Pacific competition.

Mr. Kruttschnitt at Folio 6935 testified as to the lengthening of the merchandise train from Council Bluffs to Ogden, showing that in June, 1901, which was shortly after the merger, the schedule was 58 hours and 25 minutes; November 3, 1901, 60 hours and 30 minutes; December 21, 1902, 64 hours; January, 1903, 82 hours and 10 minutes; October, 1903, 74 hours and 20 minutes; November, 1903, 74 hours and 30 minutes; October, 1907, 100 hours and 45 minutes; and when asked why the schedule was lengthened in 1907, he said:

"A. To meet the conditions that confronted us at that time. We had this panic; we could not reduce expenses, we could not increase revenues, and the problem that confronted the management of roads was how to get satisfactory results without either increasing revenues or decreasing expenses,—a pretty tough problem; but it was solved, as I have already shown, by more efficient carloading, more efficient train loading."

It does not seem to have occurred to the defendants that they might have shared in the general lack of prosperity incident to panic conditions then prevalent in the country by reducing their swollen dividends of 10% per annum, upon Union Pacific common stock. They continued these extraordinary dividends without interruption and put the entire loss upon the people along their lines who had to suffer from this addition to an impairment in service that had been progressive since 1901 with the exception of the shortening from 82 hours and 10 minutes to 74 hours and 20 minutes in October, 1903.

Now it is true that Mr. Mohler and Mr. Park say that this time was increased because they were not able to make faster time, but it is significant that in all the tables that were introduced showing selected trains running late under old schedules, even with the time they were late added to their schedule time, they did not consume 100 hours and 45 minutes, or anywhere near that amount as a usual thing. It is further significant that although the panic has passed, and although they have constructed hundreds of miles of double track since 1907, the schedule still remains as slow as it was when put in at the time of the panic. It will be remembered that while the time has been practically doubled since 1900, the distance to be traversed by these trains has

decreased 40 miles, curvature has been eliminated, mountain grades reduced, and the power has become more efficient.

Mr. Lincoln, Car Service Agent in charge of transportation of the Union Pacific, admitted at Folio 7266 that even allowing the most extreme figures that he gave, namely, 12 hours as the time that the 54 hour and 30 minute train ran late, it was still about 35 hours shorter than the 100 hour and 45 minute train when on time; and at Folio 7269, after testimony had been introduced that other commodities aside from ordinary merchandise were now given the same time as merchandise, he testified:

> "Q. As I understand it, at the present time you do not give any preference to high class freight at all, but you move dead freight just as fast as you do high class freight?
>
> A. We give preference to high class freight; but practically all of it now we say is high class freight. We have very little dead freight—coal and lumber and grain, something like that. Then we use that freight to fill out our high class freight trains with. If we have not enough of the high class freight to make a good train, we will fill it with the other freight, and it gets just as good service as the high class freight.
>
> Q. When you do not have freight enough to fill up a train do you hold it for the next day?
>
> A. We hold it for the next day, yes, sir.
>
> Q. So as to be sure to get a full train load?
>
> A. Yes, sir.
>
> Q. That is in the interest of economy in operation, purely and simply, isn't it?
>
> A. Also in the interest of economy in operation and economy in the movement of freight.
>
> Q. That is what I mean—economy in the movement of freight?
>
> A. Yes."

At Folio 7241 it appears from Mr. Park's testimony that not only has the O. R. & N. lately shortened its time as claimed, on through freight, but the Union Pacific has recently shortened the time on *Portland* freight from Omaha to Green River, the point at which the Oregon Short Line takes the train, from 90 to 74 hours, thus again showing that where there is strong competition to be met it is possible to give much better service to the public.

Mr. Richardson, Superintendent of Transportation of the Southern Pacific, shows that in spite of the fact that the ships of the Southern Pacific from New York now run to Galveston instead of New Orleans, thus shortening the rail haul very considerably, and in spite of the fact that the facilities for transferring at the docks are improved, there has been no shortening of the time of through freight from New York to San Francisco by the Sunset Route since 1900. At Folio 7460 he states that in 1900 it was 15 days and 7 hours and in 1909 15 days and 5 hours, these figures being based upon the movement of 15 cargoes of various vessels that moved during different months in the respective years. This would apparently show a decrease of two hours, but on cross-examination at Folio 7486, he admitted that the schedule from which the computation was made did not give the hour of arrival in San Francisco, and therefore the fraction of a day could not be determined from it, but it might be several hours wrong. He also admitted that 27 out of 34 carloads of freight mentioned on the first page of the schedule arrived late. If there was competition at the present time, there is no reason why the time by the Sunset Route should not be very materially shortened.

Mr. Fay, the Vice President and General Manager of the Southern Pacific lines between New Orleans and El Paso, testified to a comparison of freight service in 1901 and 1909, over the Sunset Route, and that the distance from Algiers, which is across the river from New Orleans, to El Paso, is 1194 miles; in 1901 all the Sunset freight moved by New Orleans; that the distance from Galveston, to which port the ships now proceed, to El Paso, is 882 miles, or 312 miles less; that the freight schedule from Algiers to El Paso was 68 hours and 20 minutes in 1901, and from Galveston to El Paso 72 hours and 19 minutes in 1909, thus taking substantially four hours longer to move the freight 312 miles less. (Folio 7406-7.) So the public in California has received no benefit from the expenditures along the Sunset Route in the way of better service, although at least a day's time could be cut off if the same speed was maintained over the improved tracks, that was made over the tracks before the improvements in 1901. Not only is the freight service slower than in 1901, but the passenger service on both these lines is slower, although more trains are run because the traffic has so largely increased in volume. It was admitted by Mr. McCormick, Assistant Director of Traffic, that the passenger trains from Omaha to San Francisco are slower than in 1900 in spite of the fact that the line is 90 miles shorter and that the grades and curves have been so much reduced. At Folios 7822 et seq. it appeared that the Overland Limited, the crack train by that route, made the run in January, 1900, from Omaha to San Francisco in 56 hours and 25 minutes; in September, 1909, in 60 hours and 8 minutes; that the eastbound Overland Limited in January, 1900, made the run in 58 hours and 50 minutes; in September, 1909, in 61 hours and 19 minutes; that passenger train No. 3 made

the run from Omaha to San Francisco in January, 1900, in 65 hours and 20 minutes; in September, 1909, in 70 hours and 48 minutes; that train No. 4, being the same train eastbound, made the run in January, 1900, from San Francisco to Omaha in 69 hours and 35 minutes; in September, 1909, in 72 hours and 30 minutes. On the Southern Pacific route Mr. Fay testified (Folio 7392) that the time of passenger train No. 9, from New Orleans to San Francisco, in 1901 was 95 hours and 35 minutes, and in 1909, 97 hours and 45 minutes; eastbound in 1901 the time was 96 hours and 25 minutes; and in 1909, 96 hours and 45 minutes. But in addition to this service the Southern Pacific put on a seasonal train running through the winter months from November 1st, 1894, up to the spring after the merger, April 14, 1902, called the Sunset Limited. This train has been referred to in the testimony of the complainant's witnesses as a first-class train competing actively for traffic to and from California with the Overland Limited of the Union Pacific and other transcontinental trains. It was not a daily train, as in fact, the Santa Fe Limited was not in those days, but it ran through the winter seasons from November to April. Mr. Fay gives the dates when this train was in operation, at Folio 7394. At Folio 7405 Mr. Fay testified that the time of the Sunset Limited had been shortened until in 1900, the last year before the merger, its time westbound from New Orleans to San Francisco was 72 hours, and eastbound 74 hours and 20 minutes, which, as will be seen, is a *day and a night shorter* than the fastest train now run between those points.

Mr. McCormick testified that from 1894 up to some time subsequent to the merger, the Sunset Limited train ran between San Francisco and New Orleans. It was a

first-class train of the character of the Overland Limited at its best, and made the run in 3 days, leaving New Orleans at 10:45 in the morning and arriving in San Francisco at 10:45 the third morning. (Folio 7727.) It contained a buffet, library, bathroom, barber shop, and an observation car, similar to the ones run on the 18-hour trains between Chicago and New York. The same train eastbound left San Francisco at 5 P. M. and arrived in New Orleans at 7:20 P. M. the third day, with the same equipment. This train ran four months in the year, and was discontinued in April, 1902. (Folio 7734.) It appears in his testimony at Folios 7735-6, that this train drew its patronage from the same portions of the East as the other transcontinental trains, and when it was taken off there was another train substituted for it, taking passengers from common territory in the East, running a tourist sleeper one day in the week from Washington, D. C., one day from Cincinnati, another day from Chicago by the Illinois Central to New Orleans, another day one by the M., K. & T. from St. Louis. The advantages of this route were exploited by the expenditure of money in advertising, etc. (Folios 7736-7.) At the present time this train carries four tourist cars a week from Washington, and once a week a tourist car from Chicago to San Francisco via the Illinois Central to New Orleans; one day a week a car from Cincinnati to San Francisco by the B. & O., Southwestern and Illinois Central to New Orleans, one day a week from St. Louis to San Francisco via the M., K. & T. (Folio 7748.) The traffic carried in the tourist car service from Washington originates chiefly in New York and New York territory and up in New England, moving to Washington by the Pennsylvania road, thence by the Southern Railway, to Atlanta, and westbound to Montgomery; the Louisville

& Nashville to New Orleans, and the Sunset Route to San Francisco. (Folios 7760-1.) The enormous amount of passenger traffic carried through Ogden by the Union Pacific road and westerly by the Sunset Route, which can move to the coast either way, is shown by Mr. McCormick's testimony. (Folios 7762 et seq.):

For five months of 1901 24,600 passengers by the Union Pacific route; 14,863 by the Sunset; and for the year 1907 before the travel fell off on account of the panic, it amounted to 114,520 passengers by the Union Pacific route, and 73,732 passengers by the Sunset Route. It also appears that in the year 1907, 1,988 passengers went to California by the steamer line from New York, and the Sunset Route. Since 1902 there has also been a through train over the Rock Island to El Paso, thence over the Southern Pacific, called the Golden State Limited, with the regular equipment of a first-class train, including tourist sleeper from Chicago to San Francisco. (Folio 7749.) In January, 1910, still another train was put on from El Paso over the Sunset Route to Los Angeles, carrying tourist sleepers and standard sleepers from Chicago and St. Louis to Los Angeles. In Folios 7753 to 7759 Mr. McCormick gives a thorough demonstration of the effect of competition. The Great Northern Railway put on a mail train between Chicago and Seattle, shortening the time of arrival from 7 o'clock in the evening to 5:45 in the morning. This forced the Union Pacific to shorten its mail train to Portland, which had formerly arrived in the evening, so that it arrived at eight o'clock in the morning, only a little over two hours slower than the Great Northern to Seattle. The Union Pacific mail train to San Francisco arrived at 1:08 in the afternoon. This carried New York mail by way of Chicago. The Santa Fe and the Rock Island in connection with the South-

ern Pacific from El Paso also carried New York mail out of Kansas City, which reached there by a fast train over the Pennsylvania to St. Louis and the Missouri Pacific to Kansas City. Owing to pressure from the Post Office Department these trains to Los Angeles were shortened so that they arrived at three o'clock and three-thirty in the afternoon respectively, a day previous to the arrival in San Francisco of New York mail, leaving New York at the same time and moving over the Union Pacific. It was thus possible to transfer the mail at Los Angeles to the Owl of the Southern Pacific, getting it into San Francisco at eight o'clock in the morning as against 1:08 in the afternoon when coming by the Union Pacific route. This forced the expediting of the mail train over the Union Pacific line into San Francisco, so that it now arrives at ten o'clock in the morning.

The lengthening of the time of fruit trains from Los Angeles to Chicago from five and one-half or six days to eight days or longer is a result of the protest made by the Southern Pacific and Santa Fe to the San Pedro which in connection with outside lines, to-wit, the Rio Grande and Burlington inaugurated this expedited service. The San Pedro has not been allowed to reinstate those trains, although their great value to shippers is undisputed. This impairment of service is a direct result of the control of the San Pedro by the Union Pacific.

Excessive Dividends Paid by Defendant Railway Companies.

These various examples will show the disadvantages accruing to the public from the lack of competition of two lines, both earning enormous revenues and paying large

dividends, the Union Pacific paying 10% per annum upon its common stock, and 4% upon its preferred, to which the latter is limited. The testimony shows that at the time of the reorganization, this common stock was in the market at $30 per share (Harriman Folio 1363), so that it is now paying 33 1-3 % upon that price. The Southern Pacific, as shown by Mr. Kruttschnitt's testimony at Folio 7028, is now paying six dollars per share upon the common stock, and seven dollars per share upon the preferred stock. It will be recalled that the first seventy-five millions of this Southern Pacific common stock was purchased by the Union Pacific at a trifle over $50 per share, so that it is now receiving about 12% upon that investment, although for the first five years it received no dividends. By complainant's Exhibit 218 and 219, Folios 8335 to 8339, it appears that the Oregon Short Line paid to the Union Pacific upon its stock June 30, 1906, a dividend of 50%, and a little over seven months later an additional dividend of 10%; six months later another dividend of 20%; three months later another dividend of 10%; seven months later a dividend of 100%; and one year later a dividend of 25%; that the Oregon Railroad & Navigation Co. paid 4% dividends to the Union Pacific upon its preferred stock while its stock was held by the Union Pacific from 1901 to 1905, and to the Oregon Short Line dividends at the same rate upon its preferred stock up to January 2, 1908; that on February 20, 1908, it paid an additional dividend of 77% upon the preferred stock, and 79% upon the common stock; one year later, February 20, 1909, dividends on both classes at the rate of 12½%; August 2nd, not quite six months later, 2% more on the preferred stock; February 3, 1910, 2% on the preferred stock; and February 24, 1910, 11% upon the preferred

stock and 15% upon the common stock. Complainant's Exhibit 218, Folio 8335, shows that a portion of the earnings of the Oregon Short Line out of which dividends are paid accrue from investments. No such suggestion is made, however, as to the exorbitant dividends being paid by the Oregon Railroad & Navigation Company. We have thus shown the deterioration in the service, and its consequent effect upon the public and upon the promoters of this amalgamation respectively.

b. A MOST UNFORTUNATE DIRECT EFFECT OF THE SUPPRESSION OF COMPETITION RESULTING FROM THE ACQUISITION OF THE SOUTHERN PACIFIC BY THE UNION PACIFIC, LIES IN THE FACT THAT GREAT REGIONS TRIBUTARY TO THESE LINES, WITH ENORMOUS NATURAL RESOURCES, REMAIN UNDEVELOPED.

The defendants who are in control of the Union Pacific Railroad Co. are in no sense empire builders. They have done nothing, so far as observable, toward opening up new territory, aiding in the increase of production and the growth of the western country.

They have built no transcontinental railroads. They went into the street, secured control of the securities of the Union Pacific at a time when it was in the hands of receivers, and as shown by the reorganization plan introduced in connection with the examination of the defendant Schiff, (Complainant's Exhibit 109, Folios 1757 to 1797), took hold of this property in the construction of which other men had sunk their fortunes, reorganized it and managed it for their own profit in many ways. They made large sums in connection with the floating of securities, as appears by the testimony of the defendant Kahn. They sold these securities and made these profits by reason of the favorable location of the road, the rich territory through which it was built and the great business handled over its rails. They purchased the Southern Pacific stock, eliminating competition with that line, with a large immediate profit, as is also shown by the testimony of the witness Kahn. For the purpose of further eliminating competition they purchased the majority of the stock of the Northern Pacific, incidentally receiving several million dollars commissions on the sale of the bonds issued

for the stock. They sold the Great Northern and Northern Pacific stock upon the dissolution of the Northern Securities Company at prices that netted profit to the Union Pacific of fifty or sixty millions of dollars. Instead of retiring securities of the Union Pacific with the enormous funds thus coming into the treasury, they used the same to buy from themselves great blocks of stocks in other railroads, which resulted, as testified by the defendant Kahn, in giving the Union Pacific a voice in the management of said companies. They spent large sums in bettering the physical condition of the Union Pacific and the Southern Pacific properties, said sums being largely paid by the public out of earnings, as stated by defendant Kahn. (Folio 7885.) These improvements, as already demonstrated, were not made for the public advantage, but, as stated by the late defendant Harriman, to enable greater economy in operation and to handle more traffic over the lines. (Folio 1321.) Resulting from the dominant position attained by the Union Pacific with its four lines leading East from the Pacific Coast under one control, and the enormous net earnings resulting from a great traffic with cheap operation, the value of the stock was inflated to a startling figure. Dividends have been continuously paid since 1906 at the rate of $10 per share, thus resulting in profits to the defendants so fabulous that the millions they made incidentally in buying securities from themselves for the road, or selling securities to themselves by the road, seem insignificant. (The amount of the individual defendants' holdings are shown in the stipulation Complainant's Exhibit 200, Folios 5624 et seq.) The defendants have been so intent upon the financial end of this business and so fortified in their monopoly that they have had no time, and less patience, with

A. There are at least four great competing lines. There is the Northern Pacific, the Great Northern, the O. R. & N.—that is, I don't give its corporate name, but the Harriman system; the Canadian Pacific, and then other roads are coming in by arrangement. The Chicago, Milwaukee & St. Paul is coming in.

Q. Are these roads or their branches run around through that country, reaching these wheat fields that you have spoken of?

A. Yes, I might say that eastern Washington is, for a Western place, gridironed with railroads that are fully developed, and they are more or less competing—

Q. Had the wheat fields been developed before the railroads or did the railroads come first?

A. The railroads helped to bring in the people and gave them money to raise the wheat. There was no development until the railroads came. That is true of the west. I have helped protect the surveyors of the Northern Pacific (I know all about it) from Bismarck on. The railroad was the pioneer, the forerunner—had to be. The railroad, and what it brought ended the Indian question—not the army. Yakima Valley, that is now one of the garden spots and show spots, was nothing but an Indian reservation until the railroads got there. The railroads did it all."

Mr. Hanley is still driving his cattle 150 miles to Ontario or 250 miles to Winnemucca, although solely through the force of outside competition as hereafter shown one line of railway has been started in his direction since complainant's testimony was completed. The millions of acres of wheat lands and fruit lands of central and eastern Oregon are lying there as they have from the beginning of time. Does any one believe, considering the wonderful development of the accessible parts of the West, with the people seeking new homes, for which a great population has even left the flag and removed to Canada, settling along new lines of railway which are constantly being pushed into unoccupied

regions by Canadian Railway Companies, that this Oregon territory would have remained without transportation facilities, if the Union Pacific and the Southern Pacific had continued separate and actively competing, during the period of prosperity through which this country has passed?

As shown by the testimony of Mr. Wood, Mr. Hanley and Mr. Nash, the railroad passes leading into this region have been seized, appropriated and held by these defendants. Instead of taking the money and using the credit of these splendid lines of transportation that have fallen into their hands, for the enlargement of facilities in the country served by these properties, they have used their enormous profits to buy from themselves securities issued by railroads in remote parts of the country.

Judging from defendant Kahn's testimony at Folios 7880 and 7881, they had so little appreciation of their responsibility to the people of the West from whom they were extracting their fabulous profits, that they never even gave a thought to the development of this region, which they had surrounded, when they were considering what they should do with the hundred millions to a hundred and fifty millions cash which they received for the Great Northern and Northern Pacific stock. Their minds were confined solely to the matter of stocks and bonds, and they preferred stocks because their purchase gave added power over other railway lines.

In the past four years the Oregon Short Line has paid dividends to the Union Pacific amounting to about $59,000,000 (Folios 8335 to 8339).

This alone would have gridironed central and eastern Oregon. They have not only done nothing themselves for this great region, but they have endeavored to prevent others from furnishing much needed railroad facilities by obstructing the construction of competing lines, as, for instance, the North Bank road into Portland, as admitted by the late defendant Harriman, at Folio 1313, and by commencing litigation over right of way with the Hill line recently started.

It is a matter of common knowledge, of which the Court will take notice, that in regions served by competing railroad systems, each line is trying to outdo the other, building into intervening territory, securing the location and growth of industries, the opening of new farms, the planting of crops, the raising of fruit, for the purpose of obtaining the transportation of new people and freight. The policy of these defendants having this country thus surrounded and in their power, has been to obstruct its growth by keeping railroads out while doing nothing for it themselves, so that the people of the state of Oregon, despairing of relief from the defendants, were driven to the proposal by the Legislature of a constitutional amendment permitting the state to build lines of road itself. Nothing was done by the defendants looking toward furnishing a rail outlet for Central Oregon until the dreaded competitor from the North, the Hill lines, started in to give relief to this long-suffering community. This was very lately, in fact, after complainant's testimony in this case was all taken. Mr. O'Brien testified at Folios 7334 et seq., that the Oregon Railroad & Navigation Co. is now building a line up the Des Chutes River, the same being constructed by a sub-company called the Des Chutes Railroad Company. This road is projected for 133 miles to Redmond,

Oregon. Track laying had been going on about sixty days previous to the date of his testimony, which was February 24, 1910. The reason was developed, namely, that the Hill interests so-called, are also building a line up the Des Chutes River. The O. R. & N. began about three weeks before active work was commenced by the Hill interests. (Folio 7336.) Mr. O'Brien then testified:

> "Q. At the time you commenced construction you knew they were going up there, didn't you, or understood they were?
>
> A. Well, I didn't know it, but there had been some talk about it."

He further said that he had been getting ready for about a year and a half, but he didn't want to start until it was absolutely necessary.

> "Q. But you did consider it absolutely necessary, when you heard about this other line, did you?
>
> A. Yes, we started work. That shows for itself." (Folio 7337.)

After saying there had been a good deal of clamor for transportation facilities in the interior, and that the matter had been taken up by the Chamber of Commerce and different commercial organizations, he further testified:

> "Q. Weren't you aware that the people in interior Oregon went to the legislature of Oregon because you people would not build in and develop the interior of that country, and got the legislature to pass a constitutional amendment authorizing the State itself to build lines in because you would not build?
>
> A. Yes, I know that.

* * * * * *

Q. There had been a great deal of agitation there, hadn't there, and a great many requests in one way or another?

A. A great deal of newspaper agitation.

Q. —— which you don't care much about, do you?

A. No."

It is very interesting to read Mr. O'Brien's testimony in connection with that of Mr. Calvin. The latter testified at Folios 7371-2, that he went to Portland as Vice-President and General Manager of the O. R. & N. Co., and General Manager of the Southern Pacific Co. lines in Oregon, April 1st, 1904; that a few days later he received instructions to extend the Shaniko branch up into Oregon. He asked for time to investigate it, and after having made an investigation protested against doing it, because he did not think it the proper way to develop Central Oregon, but he recommended instead the building of an east and west line through Central Oregon. On cross-examination, (Folios 7378-9), he testified:

"Q. You were asked about the extension of that Shaniko line, and stated in answer to Mr. Dunne that you recommended against extending the Shaniko line and that you did not think that was the best way to develop Central Oregon. As I understood you, you recommended a line to come in from the east?

A. I did.

Q. It has never been built, has it?

A. No, but survey has been made.

Q. I know; but the line has never been built in spite of your recommendation?

A. No. This line that we are building from Klamath Falls has not reached the proposed junction point of the east and west line.

Q. It is a good ways from Klamath Falls across to the east side of Oregon, isn't it?

A. Oh, yes.

Q. It must be 300 or 350 miles?

A. I should think fully that much.

Q. And that country in there is left without railroad facilities and is still without railroad facilities?

A. Yes.

* * * * * *

Q. The only line that is being built at present reaching up into Central Oregon is this Des Chutes River Line, isn't it?

A. As far as I know, yes."

This line was not commenced until the Hill interests so-called, had against the opposition of the defendants succeeded in building the North Bank road into Portland, thus giving a connection to a line into Central Oregon opposite the mouth of the Des Chutes.

Nothing could more strongly emphasize the desirability of competition and the fatal results to a community of monopoly than this testimony. A line from the north it is claimed was projected and abandoned in favor of an east and west line. That line has not been constructed, but as soon as it became evident that a competing system was coming in from the north by the Des Chutes River construction is begun up the same river by one of the lines included in this merger.

CORVALLIS & EASTERN.

Another property acquired to prevent possible competition through its acquisition by some outside interest is that of the Corvallis & Eastern.

Mr. Nash, for nearly fifty years a member of the bar, about thirty years of the bar of Oregon, and previously to that, of the English bar, testified at Folios 4626 et seq., with reference to the organization of the Oregon Pacific Railroad Co., of which he was the Second Vice President and Counsel, which built a railroad from Yaquina Bay to Corvallis, thence across the Willamette Valley and the Willamette River to Albany, thence from Albany along the Santiam Valley into the timber region of the Cascades, a total distance of 131 miles, from which point it was projected along a right of way which was secured entirely across the state to Ontario on the Snake River, a point on the Oregon Short Line Railroad, in the easterly part of Oregon. Some construction work was done at the east end in the valley of the Malheur, and also in the passes of the Cascades, which govern the route. The construction was begun about 1884 or 1885, and continued until about 1888. Two hundred thousand dollars worth of rock work was done in the canyon of the Malheur River, a large rock force being kept at work for ten months. (Fol. 4627.) The timber resources east of the present terminus are very great, and east of the timber region there is tributary to the proposed line about 675,000 acres of irrigable land, besides land suitable for dry farming on either side, as well as extensive stock ranges. The surveys ran for 200 miles through the stock ranges, and the stock yield is not only very large, but can be increased almost indefinitely. (Fols.

4628-29.) Mr. Nash further testified, with reference to the stock business of central Oregon, that from 100,000 to 130,000 cattle are driven every year off those ranges southerly to Montague on the Southern Pacific, and from a fourth to a third, to Ontario and points on the Short Line, all of which would be tributary to this proposed road; also that about seventeen million pounds of wool would be tributary. At present this wool has to be brought to Shaniko, which is on a short branch of the O. R. & N., by wagon trains. (Fol. 4633.) Cattle and sheep are driven from 150 to 200 miles as an average, before they reach a railroad, and the size of the territory in Oregon without railroad facilities east of the Cascade Range, excluding territory in Nevada, Idaho or California, is in the neighborhood of 300 miles each way. (Fols. 4634-37.) This road went into receivers' hands and was acquired by Mr. Hammond, who incorporated the Corvallis & Eastern Co., which took the title. Mr. Hammond owned a majority of the stock, but after a few years sold a majority of it to the Huntington Estate, and in 1906 it was acquired by the Southern Pacific. (Fols. 4629-30.) At the time this line was first operated, steamships were put on between Yaquina Bay and San Francisco, with a five-day service. Large quantities of wheat and other cereals were taken to San Francisco by those boats, which met the railroad at Yaquina Bay, and north bound freights from San Francisco were brought in and distributed by the railroad over the Willamette Valley, the same consisting of sugar, hardware, general merchandise, machinery, and general traffic. Large docks were built at Yaquina, costing several hundred thousand dollars. (Fol. 4631.) The government spent over $600,000 upon the bar, and there is now a depth of 15 or 16 feet of water on the bar at low tide, and the channel has been improved by the government

so as to make it a safe, straight and direct channel from the ocean. For a time boats were maintained on the Willamette River in connection with the railroad. (Fol. 4632.)

It appears by the testimony of Mr. McCusker, that he remembers the time that this line, in connection with its boat line to San Francisco, was competitive with the Southern Pacific, and with the O. R. & N. river boats handling all classes of merchandise for stores throughout the Willamette Valley, the said traffic coming from San Francisco. (Fol. 4488.) This railroad was never, in its incomplete state, a financial success. It has not been extended by the defendants, and there is no evidence of any intention to extend it.

We call attention to this Corvallis & Eastern purchase simply to show that the defendants in their efforts to monopolize the traffic of the western country, have acquired every possible competing line or projected competing line. In this case the railroad runs from a good harbor on the Pacific Ocean, 131 miles to the timber country in the Cascades. The low grade pass, into the country by the Malheur River, testified to by Mr. Wood and Mr. Hanley, is the most feasible route into Central Oregon from the East, and is thus occupied and controlled as against all outsiders by the Southern Pacific Co. This purchase is merely an incident in the general scheme to bottle up the country and control the railroad situation.

COOS BAY.

A significant illustration of the attitude of these defendants is shown in connection with another section rich in possibilities, needing only transportation facilities, namely, the Coos Bay region in western Oregon. It appears by the testimony of Mr. Spreckels, at Folios 957-73, that he owned a little railroad running back into the country a few miles from Coos Bay projected to a connection with the Southern Pacific at Roseburg, which is about 69 miles from the Bay. (Folio 965.)

The route up to Roseberg was through a canyon with only sufficient room for one line of road. (Fol. 971.) He had two small steamers plying between Coos Bay and San Francisco, and along the line of the railroad some lignite coal mines. He leased some docks from the state at San Francisco. He was compelled to take this property on a debt a good many years ago, and while there was a very small profit in the operation of the railroad, the boats and mines were operated at a loss. (Fols. 967 and 8.) There was, however, a certain strategic importance to this property. The railroad ran back from a good harbor for light draft vessels, and an east and west road might therefore have found this line of value. In the lifetime of Mr. Collis P. Huntington he was looking into the proposition of acquiring the road for the purpose of getting an entrance into Coos Bay and handling grain traffic to San Francisco from there instead of by Portland, saving about 300 miles. The negotiations were never concluded because of the death of Mr. Huntington. (Fols. 963-4.) In the latter part of 1905 the Southern Pacific sent a representative to Mr. Spreckels, who arranged for the purchase of the property from him. The payment was to have been made on April 18th, 1906, but that was the day of

the San Francisco earthquake, and therefore the settlement was postponed until a little later. (Fol. 966.) This property cost something more than a million dollars, and had thus been operated at a loss for many years, but for the purpose of controlling the monopoly of all transportation facilities, actual or potential, in that region, it was taken off the hands of Mr. Spreckels in the year 1906 by the Southern Pacific for $1,300,000 cash. (Fols. 958-967.) It is absurd to suggest that any such price would have been paid for this property in the absence of its strategic importance from a transportation standpoint. Mr. Spreckels was informed during the negotiations that the Southern Pacific contemplated building a line connecting with this road. (Folio 968.) No line, it is needless to say, has been built. But that is not all: The Southern Pacific not only bought this Spreckels line, but, evidently with the idea of occupying about the only other reasonably feasible line into the country and discouraging the extension of the Spreckels line, announced in 1905 that a road would be constructed from Drain, on the Southern Pacific, to Coos Bay.

Mr. Flanagan, a banker at Marshfield, Oregon, on Coos Bay, who is familiar with the country and this line, was asked to describe this proposed branch. He testified, at Folios 4758-9:

> "The construction of the road was announced, I think, in 1905. It was announced in Coos Bay that the road was to be built, and the necessary money was set aside for its construction, and about six or eight months after that, actual construction of it was begun at the Drain end, and enough rails to complete the road from Drain to, I think, all the way to Coos Bay were shipped into Drain station and a very large quantity of cement was also shipped to Drain as well as to Scottsburg.

Q. Where is Scottsburg?

A. Thirty-six miles from Drain on the Umpqua River.

Q. How was the stuff shipped to Scottsburg?

A. By sea, and a great deal of bridge material also shipped, which is still on the ground, and there is one bridge wye put in at Drain station, and a bridge built across Elk Creek; another bridge, five or six miles farther down Elk Creek, was begun but not completed, and I think probably four or five miles graded, and some work done on the tunnels. The right-of-way was secured, so far as I know, entirely from Drain to Scottsburg. * * *

Q. Is that a difficult road to construct; that is to say, are the grades difficult?

A. No, we have got a very low per cent of grade. I understand that 1-10 of one per cent was the heaviest grade on that road."

Mr. Grimes, another banker at Marshfield, testified that since 1907 nothing has been done. (Folio 4718.)

Marshfield is a town of about 5,000 people, and in the county, the chief industries are coal and lumber, dairying, horticulture and agriculture. The county stands third on the coast in dairying interests. (Folio 4716.) A report upon the traffic possibilities of the region was rendered to the late defendant Harriman by Colonel Holabird, of Los Angeles, which appears as Complainant's Exhibit 162 (Folios 4721-8), and shows the great riches of this region; that there is in operation the most modern sawmill that he had ever seen, with an average cut of 6,500,000 feet per month, and the expectation of shortly doubling it. (Folio 4726.)

Mr. Flanagan stated that there are 400 square miles of coal in the county, and 70,000,000,000 feet of lumber tributary to Coos Bay. (Folio 4756-7.)

Mr. Fisk, Purchasing Agent of the C. A. Smith Lumber Co., testified with reference to the mill of that company at Coos Bay, and that there is a very large body of timber tributary to the Bay, one of the largest bodies in the west. The only means of transportation is by steamers. (Folios 5132-3.) That in addition to the Smith mill, the Simpson Lumber Co. and the North Bend sawmill, there are other mills on the Bay. These additional mills have a capacity of about 200,000 feet a day in the aggregate, and the Smith mill about 300,000 feet a day. (Folios 5132-5.) The construction of the road from Drain having been abandoned, a committee of the Chamber of Comerce of Marshfield, made up of the witness Grimes and two other gentlemen, met the late defendant Harriman in the summer of 1908 to urge the completion of the road. Mr. Grimes testified (Folio 4719):

> "A. Of course we went for the purpose, as I have stated, of having him complete the line, as it had already been begun, and a good many people were brought in there on account of his beginning the line and would like to see it finished. He then wanted to know what resources we had that would justify the building of the road. We told him we had more than we had at the time he began the building of the road. He then asked if we were prepared to give any idea as to the tonnage. We said we were not, that we were not traffic men, and suggested to him that he send somebody who was acquainted with those conditions and affairs to report for us. He said he would. Further, in conversation, he said that if we would make a showing sufficient to justify the payment of four per cent interest on the construction of the road, he would recommend its construction."

Mr. Harriman then sent Colonel Holabird, who made the report, Complainant's Exhibit 162, mentioned above which the Court will observe is a most enthusiastic one.

Then follows in the record (Folios 4730-8) an extraordinary correspondence, the nub of which appears in a telegram addressed to two gentlemen at Marshfield, under date of March 9, 1909, signed by the late defendant Harriman (Complainant's Exhibit 164, Folio 4730), which we quote:

> "You are misinformed as to Colonel Holabird's report. My offer to your delegation last August was very plain, and if satisfactory guarantee can be had of four per cent on the cost of the road each year for ten years, over and above the cost of maintenance and operation and taxes, I will recommend its construction to our committee. No one's opinion will be satisfactory. Guarantee must be on basis that deficit in any one year will be immediately paid and the guarantee properly secured."

That is the method proposed by the defendants for developing the northwest. It was proposed that the people who were to furnish the traffic, large numbers of whom had been induced to go in by the pretense of starting the building of a railroad, should guarantee four per cent interest, taxes and all operating expenses and maintenance, for ten years, to induce the construction of a branch of defendant Southern Pacific's own railroad into a region of great richness. The joker in this proposition, in addition to the impossibility of the whole scheme, is that the making of rates, the bookkeeping and the division of earnings between the branch and the main line out of which operating expenses, maintenance and taxes would be paid, would be fixed by defendants; the operation and maintenance would be at such figures as they might conclude to make them, and the community would foot the bill. Certainly we are fortunate in having in the record the evidence of such performances of these defendants in this great northwestern country, showing the effect of the monopoly controlled by them. If no other reason existed for breaking up this combination, the situation in Oregon alone ought to be sufficient.

C. THE NATURAL, AND WE MIGHT SAY, INEVITABLE EFFECT OF MONOPOLY OR SUBSTANTIAL MONOPOLY, IS INCREASE IN RATES.

The statement of transcontinental rates from various common points in the east to Pacific Coast terminals, shown on Complainants' Exhibits 81-A, pages 866-7; 81-B, page 868; 81-F, pages 875-6; 81-G, page 877; 81-H, page 878; 81-I, page 879; 84, pages 888-90, gives a plain illustration of the result of a substantial elimination of competition. It is the boast of railroad men generally in this country, that rates are gradually but inevitably being reduced from year to year and from time to time. It is a fact that most rates, with the exception of transcontinental rates, have been gradually reduced, so that railway charges on the whole are not the subject of serious criticism on the part of shippers. But other parts of the country are served by great numbers of competitive lines. Even though they may not have common termini, they lead from various distributing points to the same territory, and thus are competitive. As, for instance, the jobbers of St. Paul, Chicago and Milwaukee meet in competition in certain territory more or less well defined. Therefore, the lines of road leading in and out of these various centers into that territory must make rates that will move the traffic and enable shippers to compete. This is as perfect competition between railroads as is the competition between the lines leading from the same distributing centers to a common territory. West of the Missouri River the lines that participate in transcontinental traffic are few in number. In fact, the only lines reaching the Pacific Ocean are the Canadian Pacific, the Great Northern, Northern Pacific, Union Pacific, Southern Pacific, and Santa Fe. In this we are, of course, treating the San Pedro,

Los Angeles and Salt Lake road as part of the Union Pacific, as we are treating the Oregon Short Line and O. R. & N. as part of the Union Pacific. It is thus easy for these lines to maintain and often advance rates south of Portland, Oregon, to the Mexican boundary. Every line south of that point is absolutely controlled by the Union Pacific, with the exception of the Santa Fe, and in that road the Union Pacific has a strong influence. Railroad men are human, and with a common traffic director in charge of every line into California, with the exception of the Santa Fe, and with the various deals and arrangements back and forth between these lines and the Santa Fe, and with some common directors, it is natural that the Union Pacific organization should dominate. This consolidation has two immediate effects on rates. It destroys the possibility of competition between the parties to the same and gives to the one official speaking for the united roads a much greater influence upon the lines not parties to the combination. Mr. Harriman in his testimony, insisted that rates had been reduced on the Union Pacific about 17% from the time he took charge up to 1906. (Folio 1300.) That statement is of very doubtful accuracy, for the reason that the rate per ton per mile for the various years does not indicate it; but if the average rates have been decreased, as he claims, that average has been produced by reductions in competitive territory. It will be remembered that from the Missouri River to Colorado and Utah common points, there are a number of lines competing with the Union Pacific on a great local business, which business amounts in the aggregate to more than the transcontinental business. Lines like the Rock Island, the Burlington, the Missouri Pacific, and Denver & Rio Grande, are actual competitors of the Union Pacific system, and it

is quite likely that these local rates may have been reduced. The testimony does not disclose whether they have or not, but the evidence does show that transcontinental rates have not been brought down, but on the contrary, have been largely increased. Much of the traffic moving to the coast from different points along the seaboard and in the interior moves on commodity tariffs—in fact, the larger portion. It is no doubt true that a very large majority of the earnings are from traffic moving on commodity rates. An inspection of Complainant's Exhibit 81-H shows that the rates are higher than in the year 1897, which was the year before the beneficent rule of the individual defendants commenced on the Union Pacific. A few examples on pages 866, 867 and 878 will demonstrate this fact. The rate on dry goods to Pacific Coast terminals from all points east of the Missouri River in 1897 was $1.50 a hundred; January 1, 1909, and for several years previous, $3.00 a hundred. The rates on cotton piece goods was $1.00; January 1, 1909, $1.10 on carload lots, and $1.60 on less than carloads. Cast iron cook stoves, $1.10, now $1.30. Canned goods then 75 cents from Cincinnati and Detroit common points and points east, and 65 cents from the Missouri River and from Chicago common points, now $1.00 from Cincinnati and points east, 95 cents from Chicago, and 90 cents from the Missouri River. Glassware then 85 cents, now $1.20. Drugs then $1.00, now $1.50. Crockery then 95 cents from Chicago and points east, 90 cents from Mississippi River common points, and 85 cents from Missouri River common points, now 95 cents from all points. The important item of nails consumed in great quantities everywhere, then 75 cents from Cincinnati and Detroit common points, Pittsburg common points and New York, and 50 cents from Missouri River points and Chi-

cago common points, now 85 cents from Cincinnati common points and 70 cents from Chicago common points and west to the Missouri River. Agricultural implements largely manufactured in Ohio and Chicago common points territory, then $1.15, now $1.35 from the same territory.

This does not look much like a reduction of 17% or any per cent, but on the contrary, shows a tremendous increase.

But Complainant's Exhibit 81-H, page 878, taken by itself, showing a comparison between the new rates put in January 1st, 1909, and rates as they had gradually been increased up to that date, demonstrates that this monopoly has added greatly to the burdens of the shipper within the last few years. The evidence that we have commented on shows that the shipments to the east of canned goods and dried fruits, nuts, hops, and similar agricultural products from California and Oregon points, is a traffic of great importance.

Complainant's Exhibit 81-G, page 877, shows how, on the first of January, 1909, the rates on all those commodities were advanced. The only reductions are on class rates upon which practically nothing moves eastbound.

Complainant's Exhibit 84, pages 888 to 890, is a statement of the rates all rail, and also by the Morgan Line and Mallory Line, in connection with the rail lines prior to January 1, 1909, and taking effect on that date. This is a table that deserves careful examination. It shows that the commodities on which the tariff has not been advanced are of minimum importance, so far as tonnage is concerned. But the important subjects of traffic moving to the coast by water and rail have been made to pay an additional tribute. It is unnecessary, and would prolong the brief to unreasonable lengths to go through this whole

All of the ten class rates, with the exception of the first two, have been increased. Class 3 from 31 cents to 41 cents; Class 4 from 26 cents to 41 cents; Classes 5-A, D and E from 18 cents to 28 cents, and Classes A and B from 23 cents to 28 cents.

The 17% reduction could not have been in this territory any more than on the transcontinental rates.

Rates into Colorado and Utah have changed very little, probably owing to the competitive lines directly reaching those points. (See Complainant's Exhibits 81-C, pages 870 and 871, and 81-D, pages 872 and 873.) These tables show that the through rates all rail from Colorado common points to New York, have not changed in any of the classes to exceed one-half of one cent, from January 1, 1898, to the present time; that is, the first-class rates changed from $2.72 to $2.72½; second class from $2.20½ to $2.21. The changes have been inconsequential. Through rates all rail from New York to Colorado common points from January 1, 1898, have likewise not changed in any case to exceed one cent, and in most cases, they are still the same. The Gulf and rail rates, which are the same by the south Atlantic ports and rail, as shown by the testimony, have been slightly reduced on some classes, remaining stationary on others from Colorado common points to New York, and on traffic moving from New York to Colorado common points, boat and rail, the tariffs have remained substantially stationary since 1900, there being an increase of only one cent on the first class, one cent on second class, one cent on the third class, the others being unchanged. Therefore, while even these rates have not shared in the general movement of reduction that has been observable in other sections, the influence of competition has been sufficient to prevent the Union Pacific-Southern Pacific com-

bination from advancing rates into this territory which is served by competing lines. It appears by Complainant's Exhibit 214, pages 4973 et seq., that the rate per ton per mile on the Southern Pacific is higher than on any transcontinental line except the Denver & Rio Grande, which is a short line with a large local business. The rate per ton per mile on the Union Pacific is substantially the same as on the Santa Fe, and upon the Union Pacific, Southern Pacific and the Santa Fe, is much higher than on the Northern Pacific, Great Northern or the Canadian Pacific. The fact is well demonstrated by these statistics that the purpose of this monopoly, created, fostered and maintained by these defendants, is the same as any monopoly, viz., to extort from the people compelled to patronize it, all the money possible; ignoring the public character of the business carried on by such combination, and spending no money for the development of the regions from which its earnings are drawn, except when forced to do so by the competition of other interests.

INTENT ON THE PART OF THE DEFENDANTS TO RESTRAIN TRADE AND MONOPOLIZE THE TRANSPORTATION BUSINESS IN THE TRANSCONTINENTAL TERRITORY.

We have discussed in great detail certain of the acts of the defendants which have resulted in the elimination of competition in this territory. We shall not repeat at length any of these matters, although for the purpose of connected and chronological statement we shall mention some of them. In determining the intention of these parties in connection with the acts they did, the court must bear in mind the fact that we suggested at the beginning of this brief, namely, that the lines of railway reaching from the Missouri River line to the Pacific, beginning at Portland on the North and extending down to the Mexican boundary, were in 1901 but four in number, to-wit, the Northern Pacific, the Union Pacific, Southern Pacific and Santa Fe. The Great Northern and Canadian Pacific reached Puget Sound. Therefore in entering upon this scheme, the defendants did not have before them such a proposition as confronted the men who controlled the American Tobacco Co. The latter, in order to arrive at a dominant position in the tobacco trade had to buy up or secure the control of many companies. The defendants here had to secure the control of very few. It is clear, also, from the reasoning in the Tobacco case and in the Standard Oil case that it is not essential to prove this conspiracy that the defendants should have had in mind at the beginning as great a monopoly as they afterwards intended. Although the purchase of the Northern Pacific and the raid upon Senator Clark's proposed independent line from Los Angeles to Salt Lake were almost contemporaneous with the Southern Pacific purchase, it was not essential that they should have

been. They might have followed each other after considerable intervals, and still each might have evidenced a settled purpose to achieve an unlawful power over and control of this business. The late defendant Harriman, the defendants Schiff, Kahn and Stillman, were connected with the matter from the beginning, Harriman, Kahn and Stillman all members of the executive committee of the Union Pacific. Schiff was a partner of Kahn, and on the reorganization committee, and from that time on the board of directors. Mr. George J. Gould was a member of the board of directors and of the executive committee until 1905. We are fortunate in having in the record the testimony given by Mr. Harriman when the relations between these companies were under investigation by the Interstate Commerce Commission. For the purpose of proving one or two facts the Government called defendant Schiff to the stand and secured the testimony from him which has been heretofore commented on, but he was not called by the defendants, nor did he testify generally upon the issues raised by the pleadings. The complainant also called Mr. Gould as a witness. The defendants called Mr. Kahn but failed to take the testimony of Mr. Stillman. Therefore he is silent as to these transactions. In connection with the San Pedro the defendant Clark was not called by the defendants to explain away his declarations introduced in evidence by the Government. The defendant Frick was not called to testify concerning the Santa Fe purchases or any other transaction developed by the testimony. All of these defendants were available, and hence we must assume that upon the vital issues of the case they could not have given testimony that would have aided the defendants. Otherwise Schiff, Clark, Stillman and Frick would have been produced as witnesses. The most important figure in this coterie was

the late defendant Harriman. His spirit animated them all He was no pretender and was frank in the declaration of his views as to the relations that should obtain between railroads and the public and as to the relations that should exist between competing railroads. In answer to Commissioner Clements at Folio 1351, he testified as follows:

> "Q. Well, you have said this morning, I think, that it would not be necessarily wrong for the road to earn fifteen per cent on its capitalization?
> A. Why, certainly not.
> Q. Where would you fix the limit?
> A. One hundred per cent, if you like?"

The record in this case shows how consistently the defendants have worked toward the attainment of such an end. The spirit animating these defendants was further disclosed by Mr. Harriman in answer to questions put by Commissioner Lane. The testimony we are about to quote also shows why the method that was taken was adopted to secure a voice in the Santa Fe. It will be remembered that the Southern Pacific and Northern Pacific purchases and the proceedings with reference to the San Pedro antedated the Northern Securities decision. The Santa Fe purchases were shortly after. After testifying with reference to the purchases of stock in various railroad corporations, a large number of which appear in Harriman, Exhibit 2, (Folio 1264), and stating that the purchases of Illinois Central, Chicago & Alton, Baltimore & Ohio and New York Central stocks had been made from the proceeds of the sale of Northern Pacific and Great Northern after the distribution of the assets of the Northern Securities Co., Mr. Harriman proceeded as follows:

"Q. Where is that thing going to stop?

A. I don't—I think it has stopped. I don't think we have any more—I would go on with it if I thought we could realize something more than we have got from these investments, I would go on and buy some more things.

Q. Supposing you concentrated two or three more you might take some other line and go right into New York?

A. Suppose we had a line from New York to San Francisco; I suppose that is what you mean; would it not be a good thing—not that we have any idea of doing it—but would it not be a good thing?

Q. Supposing that you get the Santa Fe?

A. You would not let us get it.

Q. How could we help it?

A. How could you help it? I think you would bring out your power to enforce the conditions of the Sherman Anti-trust Act pretty quick. If you will let us, I will go and take the Santa Fe to-morrow.

Q. You would take it to-morrow?

A. Why certainly I would; I would not have any hesitation; it is a pretty good property.

Q. Then it is only the restriction of the law that keeps you from taking it?

A. *I would go on as long as I lived.*

Q. Then, after you had gotten through with the Santa Fe, and had taken it, you would also take the Northern Pacific and Great Northern, if you could get them?

A. If you would let me.

Q. And your power, which you have, would gradually increase as you took one road after another, so that you might spread not only over the Pacific coast, but spread out over the Atlantic coast.

A. Yes; but hasn't your organization increased its power?" (Folos 1359-60.)

This was an open confession of the views and ambitions that animated the witness and his associates.

This tallies perfectly with the statement of the witness Kahn that we have heretofore quoted in connection with the discussion of the Santa Fe purchases, where he stated that one of the reasons for the purchase of the Santa Fe stock was to secure to the Union Pacific a voice in the councils of the Santa Fe. It hardly needs testimony to show that these defendants were familiar with the relations between the different railway and steamship companies. Mr. Schwerin testified that Mr. Harriman sold quite a block of the Pacific Mail stock to the Southern Pacific before the acquisition of the stock of the latter by the Union Pacific. (Folio 2719.) That Mr. Harriman appreciated the relations between the Union Pacific and the other lines is clearly shown. At Folio 1277 he said:

> "Q. The Santa Fe is a parallel and competing line with the Union Pacific, is it not?
> A. Undoubtedly, I am sorry to say."

And again, at Folio 1295, he said:

> "There is not a point on the Union Pacific Railroad that is not competing with a point on the Atchison road—that is, situated under the same conditions, although they may be 200 or 300 miles apart. If we are going to develop the traffic and the industries along our transportation lines, we have got to give the same service that exists at similar points on another railroad, or better service, no matter whether it is local or not.'"

And again, when asked as to whether there was any competition between the San Pedro road and the Southern Pacific or Union Pacific, he replied:

"I should say there was. It is a continual source of annoyance." (Fol. 1288.)

Of course the competition between the Southern Pacific and the San Pedro which annoyed Mr. Harriman so much is not very formidable in view of the facts which we have detailed heretofore.

As to the effect of competition Mr. Harriman testified at Folio 1325:

"Q. Then competition is the only thing that will force down the rate?

A. That is possibly so, competition between communities and competition of railroads."

He again testified at Folio 1317 that the tariff on all Pacific Railroads was the same. Having thus ascertained the attitude of mind of these parties we will consider the testimony as to what was done by them in the way of carrying out these views, which bears directly on their intentions in the premises.

As we have shown by our discussion of the evidence in detail, the Union Pacific first purchased sufficient stock of the Southern Pacific Co. to control that system. This eliminated all competition between the two systems. They were enabled to move traffic of a competitive character the way that brought the most revenue to the consolidated system, as testified by the witnesses. This purchase not only put an end to the competition between the Southern Pacific and Union Pacific, but it put in the possession of the Union Pacific the absolute control of the Panama Route between New York and San Francisco. Only one excuse is offered for this purchase, and that is that the Union Pacific desired an assurance that no competitor would secure the line from Ogden to San Francisco and thus interfere with existing relations. To use the expression adopted by the trial court, it is claimed that they were afraid of being "bottled up" at Ogden. That, of course, as is admitted by the trial court, is not a legal excuse for a purchase which directly eliminated competition and restrained trade. That is, the securing of a line, no matter how useful or profitable, running from Ogden to San Francisco, is no reason for buying the great Sunset Route, which from its inception was an active competitor of the Union Pacific. It was no excuse for acquiring control of the Panama Route and destroying that route as a competitor, as was done. But the evidence in this case clearly discloses two things with reference to that purchase which utterly destroy this explanation given by Mr. Kahn. The first and conclusive one is this: The evidence is undisputed that up to this time the Southern Pacific short line from Ogden to San Francisco had been an open highway interchanging business freely with the Union Pacific and

the Denver & Rio Grande and the Rio Grande Western. If there was no desire to eliminate competition clearly the best way to prevent such elimination was to continue that line as an open highway. In that way the through lines from the East by the Central route would have remained competitors of the Sunset Route, and the ability of the Rio Grande to unite in that competition would not have been so much lessened that it would have been driven to construct the Western Pacific for its own advantage in handling transcontinental traffic. It appears by the testimony of Mr. Gould that as a matter of fact he was not endeavoring to interfere with the acquisition of the Southern Pacific by the Union Pacific, as claimed by the defendants.

Mr. Gould testified, (Folio 8254), that from the time of the reorganization up to some time subsequent to 1901, he was a director of the Union Pacific. He was asked:

> "Q. What were your relations with Mr. Harriman as to being intimate or otherwise?
> A. Rather intimate. We were friendly. I was on the Executive Committee of the Union Pacific.
> Q. You were on that committee previous to the time you acquired the Rio Grande?
> A. Yes."

(He had previously stated that he was not interested in the Denver & Rio Grande until the fall of 1900 and the winter of 1901, going upon the board of that company February 14, 1901.)

> "Q. Do you remember of the time that the negotiations were pending on the part of Mr. Harriman for the Union Pacific for the acquisition of the stock of the Southern Pacific?
> A. Yes.

Q. Were you advised of those negotiations as they were going on?

A. Yes.

Q. By whom?

A. By Mr. Harriman. Not in the detail but in the general.

Q. During the time that those negotiations were pending or at any time after the death of Mr. Huntington, did you approach the representatives of the Huntington estate with a view to purchasing the stock of the Southern Pacific?

A. No, sir.

Q. During the time these negotiations were pending between Mr. Hariman and the Huntington people did you have any talk with him about the possibility of taking or of endeavoring to buy that stock if he did not want it, or anything of that sort?

A. Yes. Mr. Harriman seemed at one time to get a little lukewarm about taking the stock, about making the purchase. I told him if he did not want it and had no objection, I would take it for our interests.'"

On cross-examination in the endeavor apparently to make Mr. Gould appear to have been hostile, although he was Mr. Harriman's friend and on the Executive Committee and conversant with these negotiations, he was asked:

"Q. Is it not a fact that before the Union Pacific purchased the Southern Pacific stock. before the Union Pacific had acquired that stock at all, you notified Mr. Harriman that in the event he did not proceed with those negotiations, you would take that stock for your properties?

A. No, not in the way you put it, no. I suggested to Mr. Harriman, I did not notify him in the sense that you use the word, of laying the law down. I suggested to Mr. Harriman during the negotiations that if he did not want the properties—

the Southern Pacific—I would take them for my interests." (Folio 8258.)

On re-direct examination, (Folio 8260) he testified:

"Q. But neither in the fall of 1900 nor at any time did you personally attempt to buy it?
A. No, I would have considered that disloyal to my associates.
Q. Mr. Harriman?
A. Yes."

This is the hostile and antagonistic Mr. Gould, whose threatening conduct was put forward by Mr. Kahn as a justification for the acquisition by the Union Pacific of this competing line.

Mr. Hawley, who sold the Huntington stock to the Union Pacific, corroborated Mr. Gould as follows (Folio 8243):

"Q. Mr. Kahn also testified that he was advised at that time or after Mr. Huntington's death, that Mr. George Gould was trying to buy control of the Southern Pacific, or at least trying to buy the Huntington stock. Did Mr. Gould attempt to buy that Huntington stock?
A. I never heard that he did.
Q. Did he ever speak to you on the subject?
A. No, sir.
Q. Did you hear at the time from any source from the executors or anybody else that Mr. Gould was trying to buy that stock?
A. Never."

Therefore not only did Mr. Gould not endeavor to interfere with this purchase, not only was he not hostile as alleged by Mr. Kahn, but at Folio 8255 he gave the following testimony which is absolutely conclusive upon the

desire of these defendants to eliminate competition and control the whole situation themselves:

> "Q. Mr. Gould, after the acquisition of the stock or the contract for its purchase, did you have any talk with Mr. Harriman with reference to sharing in the purchase?
>
> A. *Yes, I suggested to Mr. Harriman that he let the railroads with which I was connected have a half interest in the purchase—the Missouri Pacific and the Texas & Pacific. He turned the suggestion down.*
>
> Q. *Declined?*
>
> A. *Yes.*"

On cross-examination, at Folio 8259, Mr. Gould said that this request which was so refused by Mr. Harriman was made about the time of the completion of the purchase of the Southern Pacific stock. He was then asked by counsel for defendants:

> "Q. Did you make any statement along those same lines at that time to any member of the firm of Kuhn, Loeb & Company?
>
> A. I think I mentioned it to Mr. Schiff, probably. Yes, I think I mentioned it to Mr. Schiff."

The Texas Pacific connects with the Southern Pacific at El Paso. The Missouri Pacific reaches Denver, and now has a preferred connection into Ogden over the Rio Grande, which has in turn absorbed the Rio Grande Western. The acquisition of the Rio Grande by the Gould interests was made about the same time, perhaps a little later. The fact that Mr. Harriman declined to permit the Gould lines to share in the purchase, which would have made the financial burden only one-half as great, while in the absence of a desire to monopolize, the situation would have been equally favorable for the purpose claimed, namely, to insure against

the acquisition of the line from Ogden to San Francisco by a hostile interest, is conclusive evidence that the intention of these defendants was as is alleged by the Government in the complaint.

Again, the only testimony offered to negative the allegation that this purchase was made to eliminate competition and was solely for the purpose of securing the Ogden-San Francisco line, is that given by Mr. Kahn. He stated that the executive committee of the Union Pacific had desired to make a binding traffic arrangement to insure this open highway during the lifetime of Mr. Huntington, and on his direct examination stated that Mr. Harriman had had various interviews with Mr. Huntington for that purpose, and had in those interviews gone to the extent of offering to buy the Central Pacific line alone. But on cross-examination Mr. Kahn was obliged to admit that these statements with reference to Mr. Harriman's interviews with Mr. Huntington were pure hearsay. At Folio 7893 he testified with reference to these proposed arrangements:

> "Q. Who made that offer to Mr. Huntington? When was it made and were you present when it was made?
>
> A. Mr. Harriman made that offer and he made it more than once.
>
> Q. Was it ever made in your presence, Mr. Kahn? Mr. Harriman is dead, Mr. Huntington is dead, and that is the reason I am trying to find out whether this is merely something that was told you or whether it is something you know of your own knowledge and were present when the offer was made.
>
> A. I was in daily contact with Mr. Harriman. I saw him after every important conference, and I saw him in conferences. *Whether or not I was at the conference at which that particular proposition was made I could not swear.*

Q. You would not undertake to swear that such a proposition was ever made in your presence?

A. No, I would not undertake to swear to that."

That no such proposition was ever made is demonstrated to a moral certainty by the fact that *none of the immediate associates of Mr. Huntington who were familiar with his business and with whom he discussed His affairs, ever heard of any attempt by Mr. Harriman either to make a permanent contract between the Union and Southern Pacific or to buy, on behalf of the Union Pacific the Central Pacific line alone, as claimed by Mr. Kahn.* Mr. Hawley, who was Mr. Huntington's intimate associate and for nineteen years the representative in New York of the Southern Pacific, who sold the Huntington stock together with his own, to the Union Pacific when the purchase was made immediately after Mr. Huntington's death, testified at Folios 8245 and 6, that he never knew of any such alleged attempt. Mr. Tweed, who was the Vice President and General Counsel of the Southern Pacific and Mr. Huntington's executor, whose personal and professional relations with him were of the most intimate and confidential character, and who officed in the same suite with Mr. Huntington, having his attention called to Mr. Kahn's statement gave the following testimony at Folios 8393 and 4:

"Q. Did any offer by Mr. Harriman to Mr. Huntington to purchase the Central Pacific line ever come to your knowledge, Mr. Tweed?

A. I have no recollection of such an offer having come to my knowledge."

Mr. Miles, a gentleman about sixty years of age, testified at Folios 8261 et seq., that for nineteen years previous to the death of Mr. Huntington and up to that date, he was

his private secretary; that he attended to all of his correspondence; that outside of business, his relations with him were intimate; that he had traveled with and always accompanied him on his trips to California, living there at his house; that he was with Mr. Huntington when he died at his camp in the Adirondacks; that his office or desk for nineteen years was in the same room with Mr. Huntington; that he very frequently talked over his business matters with him and in his presence, and finally that his relations with Mr. Huntington were of an exceedingly intimate and confidential character and so continued up to the time of his death. He said Mr. Harriman had come to Mr. Huntington's office occasionally but very rarely; that he made very short stops; that when he came to the office he saw him there; that he did not recall that Mr. Harriman ever had a long conference with Mr. Huntington. There was then read to him Mr. Kahn's statement as to these alleged efforts of Mr. Harriman during the last year or two of Mr. Huntington's life, and he was asked whether any such negotiations ever came to his attention, and he answered "No," and further said that he had never heard of them. This would seem enough. But in addition, Mr. Gould, who, it must be remembered, was a member of the executive committee of the Union Pacific, and as he said, on friendly and intimate terms with Mr. Harriman, after testifying to the negotiations after Mr. Huntington's death with reference to the stock purchase, said, (Folio 8255):

> "Q. During the time these negotiations were pending *or at any time* did you know of any effort being made to buy the Central Pacific line alone?
>
> A. No, I don't remember of it."

If this was a matter, as Mr. Kahn claims, that was talked over in the executive committee of the Union Pacific, why did not the defendants call Mr. Stillman, who was available, or Mr. Marvin Hughitt, who was a member of that committee, to fortify Mr. Kahn's statement after it was thus so thoroughly discredited? Why was not even the defendant Schiff put upon the stand to corroborate his partner? The defendants relied upon this alleged reason for their defense in this case, and if there was any person living who could have gone on the stand to corroborate Mr. Kahn, they would have produced him, but they did not offer the testimony of any of these other gentlemen. That Mr. Kahn was, to say the least, a very careless witness, was further shown by the fact that he testified that the Huntington stock was not purchased by the Union Pacific direct, but "that stock was bought by Kuhn, Loeb & Company on their own responsibility and at their own risk, with the sole understanding that they took upon themselves the obligation of offering it to the Union Pacific, and that the Union Pacific could take it or not as it saw fit; (Folio 7882) that the purchase was made from the Huntington estate. (Folio 7883). He then gave the following testimony at Folio 7908:

"Q. Who controlled that Huntington stock before Kuhn, Loeb & Company bought it? Who were the executors?

A. The executors were Harry Huntington, I think, and Mr. Tweed and Mrs. Huntington.

Q. That is H. E. Huntington?

A. That is H. E. Huntington.

Q. And Mr. Tweed?

A. And Mr. Tweed and Mrs. Huntington, as far as I can remember.

Q. Who conducted the negotiation with the executors on behalf of your firm for the purchase of the stock.

A. *Largely ourselves.*

Q. *I say who acted for your firm?*

A. *Mr. Schiff and myself with the cooperation of Mr. Harriman.*

Q. *Then the negotiations for the purchase of that stock from the Huntington estate were conducted by Mr. Jacob H. Schiff, Mr. E. H. Harriman and yourself?*

A. *Yes.*

Q. And over what period of time did those negotiations extend?

A. The negotiations for the actual acquisition materialized very rapidly. I should say not more than two weeks.

Q. And when did they come to a head?

A. In February, 1901, or the end of January, 1901, I think. Yes, it was the end of January, 1901."

In view of this detailed statement of Mr. Kahn and the fact that he is the witness upon whom the defendants rely in this case, it is interesting to observe:

First, that the testimony discloses that the stock was not sold by the executors of Mr. Huntington, but by beneficiaries under his will, to whom it passed directly;

Second, that the executors of the will were persons different from the ones named by Mr. Kahn, even if they had made the sale;

Third, that the sale was not made to Kuhn, Loeb & Company, but made directly to Mr. Harriman; that all of the negotiations were with Mr. Harriman, representing the purchaser, and the only time a member of Kuhn, Loeb & Company appeared in the transaction was on the evening at Mr. Harriman's house when the deal was agreed to, Mr. Schiff being present but taking no part in the negotiations and Mr. Kahn not showing up in the transaction at all.

Mr. Hawley testified that he had long been interested with Mr. Huntington in Southern Pacific stock; that a short time before the death of Mr. Huntington he had joined with him in the purchase of a portion of the Crocker stock, that interest having at one time owned a fourth of the capital of the Southern Pacific; that the purchase was for the purpose of increasing their interest in and maintaining control of the company. The purchase amounted to 100,000 shares. (Folios 8243 and 4.) His attention was then called to Mr. Kahn's testimony to the effect that most of the first seventy-five millions of stock acquired by the Union Pacific was purchased from the Huntington estate by Kuhn, Loeb & Company, and he was asked what, if anything, he had to do with the sale of the Huntington stock, and testified that he himself negotiated the sale of 475,000 shares including the entire Huntington holdings and his own; that he sold the stock to Mr. Harriman and the transaction was consummated at Mr. Harriman's house; that the negotiations were in progress for some little time. He was asked:

> "Q. Were your negotiations exclusively with Mr. Harriman?
>
> A. Yes, so far as the Union Pacific was concerned.'"

He further said that when the matter was finally concluded there were present Mr. Harriman, Mr. Schiff, Mr. H. E. Huntington and himself. (Folios 8246 and 7.) He further testified:

> "Q. You stated in your direct examination that your negotiations, so far as the matter of the sale of the stocks was concerned, were entirely with Mr. Harriman, and you saw Mr. Schiff finally at the interview when it was closed?
>
> A. That is all.
>
> Q. Did Mr. Schiff take any part in the negotiations?

A. No, sir.

Q. During the course of those negotiations with Mr. Harriman for the sale of this stock, was any proposition made to you by Mr. Harriman looking to the purchase or the control simply of the Central Pacific line?

A. No, sir.

Q. There were no negotiations except for the purchase of the stock?

A. That is all. * * *

Q. And you put through this transaction without any compensation, as you stated to Mr. Dunne, so far as the Huntington stock was concerned? You were not employed by them, but you were selling your own stock, and you sold the stock of your deceased friend?

A. That is right." (Fols. 8251-2.)

A copy of Mr. Huntington's will was produced by Mr. Tweed, and introduced in evidence as Complainant's Exhibit 217, (Folios 8295 et seq.) By subdivision 8 of the will, (Folio 8301) all Southern Pacific stock owned by Mr. Huntington was given directly to his widow, Mrs. Huntington, and his nephew, Mr. H. E. Huntington, in the proportion of two-thirds to the widow, and one-third to the nephew. The executors of the will were Mrs. Huntington, Mr. Tweed and Isaac E. Gates. Mr. H. E. Huntington was not an executor as stated by Mr. Kahn. Mr. Hawley further stated that the executors had nothing to do with the sale, as the stock was left entirely free from the power of the executors as a special bequest. (Folios 8248 and 49.) Mr. Tweed when testifying called attention to the eighth clause of the will making disposition of the Southern Pacific stock, and then testified with reference to the sale of the same:

"Q. Was that sold by the executors or was it sold by the beneficiaries under this clause?

A. It was sold by the beneficiaries, Mrs. Huntington and Mr. H. E. Huntington.

Q. Were the negotiations for the sale of that stock with the beneficiaries or their representatives or with the executors?

A. With the beneficiaries."

(Folio 8295.)

Mr. Tweed, being one of the executors, was certainly in a position to know whether Mr. Hawley testified truthfully that he made this sale, or whether the same was made as Mr. Kahn said, by the executors. It is significant that neither Mr. Schiff nor Mr. H. E. Huntington were called to contradict this testimony or to fortify the thoroughly shattered testimony of Mr. Kahn. Even though there had been any evidence entitled to belief that the Union Pacific had bought this stock for the simple purpose of getting the line into San Francisco with some local lines in California, it would, of course, be no defense to this charge if in fact the result was to directly eliminate competition. But even this excuse was wiped out by the testimony to which we have called attention. The defendants seem to be under the impression that a defense can be made out if it would have been a profitable transaction to the Union Pacific, taking into account only the Ogden line irrespective of how much the competition of the Union Pacific with other lines might be eliminated. With the idea of developing that fact on the cross-examination of Mr. Gould, the following question and answer appear, the question being put by the defendants' counsel:

"Q. You have stated to Mr. Severance that you were friendly with Mr. Harriman at the time of these negotiations, that you were a member with him of the executive committee. Do you know whether during the pendency of his negotiations

for the purchase of the stock and before the consummation of the sale, he was apprehensive that other interests over and above your own interests were desirous of getting that stock?

A. Yes, he talked it over with me several times, and he was afraid the North-Western would build from the Black Hills. They had a line up to the Black Hills, and he was afraid the North-Western would build from the terminus of their line through to Ogden, going through a canyon that lies to the north of Ogden. Ogden Canyon, I think the name is, but I am not quite sure. Then he also used to be afraid of the Burlington building through to Ogden." (Fol. 8259.)

These ghosts were commented on in the brief of counsel in the court below as making it lawful for the Union Pacific to make this purchase. If an illegal transaction can be legalized by an interested party having fears in the back of his head, no matter how remote the excuse for such apprehension, then the law becomes a farce. It would probably have cost the North-Western about as much to build from the Black Hills through the mountains of Wyoming to Ogden as it would have cost the Union Pacific to have built its own line to California, and it would have been a very expensive undertaking for the Burlington to build from Denver through the mountains of Colorado and Utah to Ogden. There is no evidence that anything had been done by either the North-Western or the Burlington looking to such extensions, or that either of them had considered the same. How Mr. Harriman would have been injured if such extensions had been made, except by the fact that other competitors of the Union Pacific would have paralleled its line, is hard to see. It shows how void of a reasonable defense is the defendants' case when such fancies are dragged in and commented upon.

ATTEMPTED ACQUISITION OF A HALF INTEREST IN THE DENVER & RIO GRANDE.

The Denver & Rio Grande is an active, energetic competitor of the Union Pacific both on local business, between Colorado and Utah common points, and also on all transcontinental traffic. It is the competitor that it is claimed was feared by the Union Pacific. It is one of the competitors that it undertook to destroy by this purchase and the through business of which was so taken away by it that the Western Pacific line was constructed. In spite of the fact that the trial court held that in determining whether one line is a competitor of another, its connections must be disregarded, that court said:

> "The same considerations lead to the conclusion that no combination or conspiracy to monopolize or attempt to monopolize trade or commerce among the states or with foreign nations, was entered into. Moreover the fact that the Union Pacific Company did not secure or undertake to secure the control of the Santa Fe road, a thoroughly sufficient, well-equipped and powerful rival for transcontinental business, or the Denver & Rio Grande, a potential, and later, an actual powerful rival for the same business, affords additional conclusive evidence of no such combination or conspiracy."

How the Denver & Rio Grande, or the Santa Fe, for that matter, could be powerful rivals for transcontinental business, when both they and the Union Pacific were necessarily dependent upon connections for that business, in view of the rule upon that matter adopted by the trial court, is inexplicable. This statement that they were both rivals and competitors on transcontinental business, is, however, absolutely true, and the fact that the trial court itself has so stated, is an answer to its ruling in another part of the

opinion, that competitors must be sufficient and complete in and of themselves without regard to their connections. It is admitted by everyone that the Denver & Rio Grande is a potential, and in fact, an actual rival for transcontinental business. Although such a state of rivalry existed Mr. Harriman was a director of that road until the time that Mr. Gould decided to assist in the construction of the Western Pacific, at which time he withdrew, Mr. Gould likewise withdrawing from the directorate and executive committee of the Union Pacific. (See Letter Harriman to Gould, Folios 383 & 4.) In the winter of 1900 and 1901, Mr. Gould purchased the control of the Denver & Rio Grande in the market, mostly in the London market. After Mr. Harriman had refused to allow Mr. Gould's companies to share in the Southern Pacific purchase, the following interview took place between them, as testified to by Mr. Gould at Folio 8255:

> "Q. *Did he (Mr. Harriman) make any suggestion to you subsequent to that with reference to permitting him to have an interest in the Denver & Rio Grande purchase?*
>
> A. *Yes. When I told him that I had acquired the control of the Denver & Rio Grande, he asked me for a half interest. He first said, "You bought that, I suppose, for both interests—Union Pacific and your own." I said, "No." He said, "Well, I would like to have a half interest in it." I told him I could not arrange it.*
>
> Q. It could not be arranged?
>
> A. No."

What conceivable reason can be advanced why the Union Pacific should have asked for a half interest in this powerful rival if there was no intention on the part of these defendants to eliminate competition in transcontinental traf-

fic? It is idle to enlarge upon such evidence. How the trial court could have overlooked this testimony we do not understand. Its attention was called to it in the brief in the court below and in the oral argument, and this testimony is undisputed. Even Mr. Kahn did not take the stand to deny that the Union Pacific wanted a half interest in the purchase of the Rio Grande, and that request was entirely consistent with what had been done up to that time and with what was done later; and if Mr. Gould had not quietly purchased this control, no doubt the defendants would have had it if they had discovered that the stock was for sale.

NORTHERN PACIFIC AND BURLINGTON.

We have shown in great detail in our discussion of the Northern Pacific purchase that the defendants knew that purchase was illegal when they made it. (Supra pp. 396 et seq.) Both Schiff and Kahn admitted on the stand that they knew the Union Pacific and Northern Pacific were competitors, and Kahn stated in the testimony which we have quoted, that the illegality was one of the risks they took in making this enormous purchase. The only excuse assigned for this purchase was that they were denied an illegal participation in the purchase of the Burlington by the Northern Pacific and Great Northern. We have shown by the testimony that Harriman and Schiff made repeated demands upon Mr. Hill, representing the Northern lines in this purchase, that they be allowed to share in it. This court has held that the acquisition of the Northern Pacific stock was illegal under the Sherman Act. They knew it was illegal at the time; they knew, if they had cared at all about it, that the purchase of a half interest in the Burlington alone would have been illegal, and still, because they were denied this unlawful participation they went into the market and made the purchase which led up to the Northern Pacific panic in May, 1901. The fact that they admitted these demands stamps as absolutely true, if it needed any verification, Mr. Gould's testimony that Mr. Harriman for the Union Pacific demanded a half interest in the Denver & Rio Grande. The Burlington extended half the length of the Union Pacific, namely, from the Missouri River to Denver; the Denver & Rio Grande the other half, from Denver to Salt Lake and Ogden, and still these defendants say there is no evidence in the case, of any intent on their part to monopolize transcontinental traffic, and that was the conclusion of the majority of the lower court.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD.

Under the detailed discussion of the performances of the defendants relative to the San Pedro road, we have shown that until the purchase of the control of the Southern Pacific no move was made by the Union Pacific toward building the line to Los Angeles. Up to that time the traffic from Utah to Southern California moved by the Southern Pacific. The proposed line of Senator Clark, which it was publicly stated would be independent, would have been a competitor both of the Sunset Route of the Southern Pacific and of the Central Pacific not only on Southern California business, but in independent hands and assuming the Santa Fe to have been likewise independent, it would have been a competitor on business to San Francisco and other points in California. A through line, according to the testimony, could be profitably made into San Francisco from Salt Lake over the rails of the San Pedro and the Santa Fe. It is clear that until after the acquisition of the Southern Pacific no thought had existed in the minds of the Union Pacific organization looking to the construction of a line to Los Angeles. This is made doubly certain by the fact that no arrangements had been made for financing so expensive and important an enterprise. When the board of directors of the Union Pacific in February, 1901, decided to issue one hundred millions of convertible bonds, forty millions of the same were to be devoted to the acquisition of the Southern Pacific, the other sixty millions to fighting the Great Northern and Northern Pacific, and the said balance was actually used in the acquisition of the stock of the Northern Pacific. There is not a line in the proceedings of the board of directors referring in the remotest degree to any proposed line of railroad to Los Angeles. Mr. Gibbon, Vice President and General Counsel

of the San Pedro, testified at Folios 1186 and 7 that they contemplated that they would have connections with the Union Pacific if they ran through from Los Angeles to Salt Lake as an independent line, and then gave the following further testimony:

> "Q. Was there any reason why you would not?
> A. No reason that we knew of at that time why we would not. But later on we discovered that the interests of the Union Pacific would require it to have some sort of a connecting line in southern California, or a very considerable interest in that sort of a line.
>
> * * * * * *
>
> Q. Why did its interest require it to have that? It had not had it for all the years the Union Pacific had been built, had it?
> A. As to why and wherefores, I can hardly be expected to answer for them. It was very evident to us, however, that they were going to do it, because they had incorporated all the companies for that purpose, and they were in the field surveying and getting material together, and it was the practical question of what we had to face that we had to deal with.
> Q. And they went through the work of incorporating these companies, and put their surveyors in the field, only after you people had started out to build an independent line to Salt Lake City?
> A. Yes, sir.
> Q. Prior to that time they had been compelled to serve California either through the El Paso gateway or the Sacramento gateway?
> A. Yes, sir.
> Q. And they had made no move whatever to serve them through a direct line from Salt Lake, or any Utah point thereabouts?
> A. No, sir."

Therefore, after Senator Clark and his associates had invested large sums of money in the purchase of terminals at Los Angeles, the line of railroad from San Pedro to Los Angeles, in surveys and other necessary expenditures, the Union Pacific, to maintain its monopoly that had been acquired by the Southern Pacific purchase, started the construction of a parallel line, which, in view of the arid region to be crossed in Nevada, furnishing substantially no local business to any railroad, would have meant disaster to the independent enterprise. As the business from Southern California to Utah and beyond would not only have been divided, but because of the superior facilities of the Union Pacific, and its control of the Southern Pacific terminals at Los Angeles and the lines radiating from that point through the fruit region, it became apparent that the struggle would have been very unequal. The work of construction continued, nevertheless, in the manner that we have heretofore discussed in detail, until the agreement of July, 1902, by which the Union Pacific took possession of the San Pedro. This contract was for the time a secret one. It was expressly stated therein that it should be secret so as to preserve the apparent independent character of the enterprise. Another year elapsed before the final contracts and deeds were made, which put an end publicly to the independent line of railroad which Senator Clark had boasted in the speech we have heretofore quoted would break the arm of monopoly that had so long separated Los Angeles and Salt Lake. The defendants were not content with acquiring half the stock, but obliged Senator Clark and his associates to stipulate that they would not sell any of their own stock without giving the Short Line the first opportunity to purchase it. They were not content even with that assurance of control, but entered into contracts run-

ning for ninety-nine years, by which the San Pedro contracted that it would not build, or aid or assist in building any lines of railroad north of Salt Lake City and the Oregon Short Line agreed that it would not, during the same period, aid or assist in the building of any lines of railroad south of Salt Lake City. For the purpose of further stamping out any shadow of independence, it was further agreed that the Union Pacific should make the joint rates in and out of all stations on the San Pedro in Utah. At the same time the San Pedro agreed to adopt for ninety-nine years the local tariffs of the Southern Pacific unless changed by mutual agreement or by law. It is claimed that this was intended to apply only to Southern California, but the contract does not so state. On the contrary, by every fair intendment from the language, it obligated the San Pedro to adopt the rates of the Southern Pacific on all business local to its line. It is significant that this contract ran for ninety-nine years, although the lease of a few miles of track in Southern California, which was the excuse for the same, only ran forty-nine years. Later on the San Pedro agreed in writing not to join in any through rates to California points north of Santa Barbara and Mojave. The sole and only purpose of this agreement was to prevent the San Pedro from uniting with the Santa Fe, if it should be so advised, in the transportation of business between Salt Lake and points to the East thereof, and the San Joaquin Valley or San Francisco. Although Los Angeles is a great city with a seaport at San Pedro in the construction of which the United States government has spent millions of money, and although the terminus of the San Pedro Railroad is on the docks at San Pedro, the traffic officials of that line were not allowed by the Union Pacific to close an agreement already approved by them and by a steamship com-

pany, for a line of vessels to ply between San Pedro and the Orient interchanging business with the San Pedro Railway. The reason for this is apparent. Such a line would have been competitive with the Pacific Mail and the Portland line, which were already in the combination. We have thus briefly reviewed the various steps taken in connection with the San Pedro, from which but one inference can be drawn, namely, that they were but additional acts demonstrating the intention of these defendants to monopolize the transcontinental traffic.

ATCHISON, TOPEKA & SANTA FE.

The same year, 1901, that these other transactions took place, the Atchison, Topeka & Santa Fe Railway Co., through Mr. Murphy, the President of their subsidiary line, the Santa Fe, Prescott & Phoenix, incorporated a company and surveyed a line of railroad from Phoenix southeasterly across the Salt River Valley into the Gila Valley to a point where the San Pedro River flows into the Gila, thence up the valley of the San Pedro to Benson, the western terminus of the El Paso & Southwestern Railroad. This latter line is an independent one starting at El Paso, where it connects with various lines to the East, reaching the Gulf of Mexico, and also with the Mexican Central, which runs to the City of Mexico, and having upon its line various large industries such as great smelters and world famous copper mines. Arrangements were made for an interchange of traffic between the Santa Fe line and the El Paso & Southwestern, which was looking for a Western outlet, having no other than the Southern Pacific from Benson to California. The construction of this line in Southern Arizona known as the Phoenix & Eastern was proceeding at the same time that the Santa Fe was building the cut-off in Arizona, doing away with the heavy grades down into the valley of the Colorado River at the Needles. While the Phoenix & Eastern was under construction, surveys were also made to the East through the Gila Canyon and the Aravaipa Canyon to determine the best line over which tracks could be laid to a connection with the Santa Fe's lines at Deming, New Mexico. The construction of the line to Benson would have opened up a new route from the South to California, and would also have made a new outlet to the East for the products of the Salt River Valley in Arizona, as well as traffic originating in California. The

line would have been strictly competitive with the Sunset Route of the Southern Pacific. The construction of the line through to Deming would have given to the Santa Fe a new transcontinental line with a lower grade, although slightly greater mileage than any other transcontinental railroad. Every effort was made by the Southern Pacific to prevent the construction of this line, but ninety miles of the same was built. For seventeen miles it paralleled a branch of the Southern Pacific from Phoenix to Mesa in the Salt River Valley. During this same period the Santa Fe acquired certain lines of railway in Northern California reaching the great timber country with the intention of extending them down to the Bay of San Francisco and a connection with its through line to the East. The Southern Pacific acquired certain short lines commencing at the Bay of San Francisco running North, with the intention of extending those lines into the timber region. While these matters were in this condition in 1904, Mr. Harriman notified Mr. Ripley, the President of the Santa Fe, and Mr. Morawetz, the chairman of its board of directors, that certain of the defendants with one or two intimate associates and himself, had acquired about thirty millions of stock in the Santa Fe, and demanded representation upon the board of directors, and for the purpose of eliminating competition between the two systems, or to use his language, deal more frankly and openly with each other and have knowledge of what each other was doing, proposed that Mr. Morawetz become a member of the executive committee of the Southern Pacific or Union Pacific, although he was not a stockholder in either one, and that he, Mr. Harriman, be allowed a like position on the Santa Fe. Mr. Morawetz objected to Mr. Harriman, but agreed to the election of two members of the Union Pacific board, Mr. Frick and Mr. Rog-

ers, who were placed upon the board of directors of the Santa Fe, and contemporaneously with that arrangement this competitive line in Southern Arizona was turned over to the Southern Pacific at cost and interest, and the two lines in Northwestern California were amalgamated into one corporation, the stock of which was equally divided between the Southern Pacific and Santa Fe. The only reason given by the defendants to Mr. Morawetz for demanding that the Phoenix & Eastern be turned over to them was that the Santa Fe was invading the territory of the Southern Pacific. It was, but has ceased to do so, and divides the business of that region with the Southern Pacific pursuant to the favorite policy of these defendants, who erected a dead line at the latitude of Salt Lake City in the case of the San Pedro. There can be no question that these performances were for the sole and only purpose of minimizing or eliminating the competition between the Santa Fe and the Union Pacific-Southern Pacific system, and as usual, the great strength and power that had been achieved by these defendants prevailed, and the Santa Fe was thus stripped of its independence. That this was the sole purpose is shown by the admission of defendant Schiff, that it was by reason of no complaint as to the manner in which the Santa Fe road was being conducted that they asked for members of the board of directors. It is shown by the fact that as soon as the two members of the board were safely in office and elected for a period of years, these defendants sold their stock, so that in the year following their joint holdings of Santa Fe amounting to over sixteen million dollars entirely disappeared and separately they remained the owners of only a little over one million. For the purpose of having a voice in the councils of the Santa Fe as stated by defendant Kahn, however, the Oregon Short

Line then purchased ten millions of stock in that company. Defendants Frick and Rogers, the Union Pacific directors, voted for the contracts by which the Santa Fe turned over its Phoenix & Eastern line to the corporation in which they were chiefly interested, and voted for the contract for the amalgamation of the two interests in Northwestern California. These two directors also continued in office although the stock owned by the defendants, which they were ostensibly elected to represent had been sold. Since then most agreeable harmony has prevailed between the Santa Fe and Union Pacific. There has not only been no competition between them for the enormous citrous fruit business of Southern California, but the Santa Fe has turned over to the Southern Pacific and the San Pedro a total amounting to about 15% of the total fruit traffic of that region. The testimony shows that fruit is naturally shipped over the lines of railway upon which it is packed. 60% of the fruit is packed adjacent to the tracks of the Santa Fe, but only 45% moves to the East over that line, 45% going over the Southern Pacific, and 10% over the San Pedro. There is delightful harmony on all importations from the Orient, Mr. Schwerin, the General Manager of all the steamship lines in the combination, dividing the traffic ship load by ship load, between the two. The mere statement of these facts shows that the purpose entertained by the defendants in 1901 was continuously prosecuted It is apparent from the testimony of Mr. Harriman that he was afraid to purchase the absolute control of the Santa Fe for the Union Pacific, so they did all they dared, but that was too much.

CORVALLIS & EASTERN.

This line is valuable to the Southern Pacific only as a preventative of competition. It leads from a good harbor in Oregon easterly to the Cascade Mountains crossing the Willamette Valley. It has a right of way entirely across the state and controls the most feasible entrance into Central Oregon from the East, namely the Malheur Canyon. Pursuant to a general policy of bottling up the country which is surrounded by the three lines, the Oregon Short Line, Oregon Railroad & Navigation Company, and the Southern Pacific, this line was acquired in 1906, and its acquisition is another evidence of the settled purpose and intention of these parties.

COOS BAY.

For the purpose of absolutely controlling all avenues of transportation that might by extensions and enlargements interfere with the monopoly of these defendants, in the spring of 1906 the Southern Pacific paid in cash a very large price for a very small property which was being run at a loss. There was no possible excuse for giving Mr. Spreckels this premium upon this bad investment, except the intention of eliminating all chance of competition in that territory.

Further showing how the same spirit animated all of these parties even in minor matters, it appears by the testimony of Mr. Mahl, Comptroller of the Union Pacific-Southern Pacific systems, at Folio 8127 et seq., that the Union Pacific has secured the control of the St. Joseph & Grand Island Railway, thus taking possession of a possible competitor at the easterly end of the system. We call attention to this as another evidence of the settled purpose and intention of these parties to monopolize in every conceivable way the transcontinental traffic. The St. Joseph & Grand Island is a line running from Grand Island, Nebraska, to St. Joseph, Missouri, and thence to Kansas City. The stock of the company was purchased by the Union Pacific from the late Mr. Harriman in 1906, and the purchase was made upon the report of a special committee of the board of which the defendant Frick was a member. The report is in the record, Folios 8135 et seq. This report, after reciting the amount of stock controlled by Mr. Harriman and the price he was willing to take for it, concludes:

> "The acquisition of the stock would secure practical control of the property, and at the price named would (at 4%) impose upon the Union Pacific Railroad Company an annual carrying charge of substantially $80,500. In view of the expenditures necessary to place the property in proper physical condition to economically handle an increased tonnage, it it is not likely that this carrying charge would, in the near future be materially offset by dividends on the stock of the Grand Island Company but the value of the stock would of course be enhanced by the application of surplus net earnings to permanent betterments.
>
> After a careful review of such data as we have been able to obtain, it is our judgment that the

> strategic position of this property, the economies to be effected by its use due to the savings in distance and more favorable gradients and curvature and its entrance into the City of St. Joseph, considered in connection with the plans of the Union Pacific Company for the enlargement of its trans-Missouri River System and *the further fact that its acquisition by hostile interests might prove both vexatious and costly, fully warrant* the Union Pacific Company in securing the practical control of the property on the terms suggested."

This purchase is a small matter. It is probably illegal, because it is a line of railroad running from Grand Island to St. Joseph and Kansas City, and the Union Pacific has a line between the same points. Its effect upon transcontinental traffic is, however, of little consequence, and we only call attention to it as showing the spirit that consistently animated all of these defendants. In this case it is Mr. Frick who speaks for them. The report concedes that the dividends on the stock cannot pay the interest upon the cost, but the purchase is favored because of the strategic position of the property and the fact that its acquisition by hostile interests might prove both vexatious and costly. It is another case like the Burlington, where it was feared that the introduction of hostile interests might interfere with comfortable competition. We have thus commented briefly upon the acts of these defendants and their declarations from 1901 down to 1906, and we do not conceive how there can be any question whatever that the allegations in the bill as to the making and carrying out of this conspiracy are absolutely established. The defendants have betrayed from first to last the intention to monopolize, not by normal growth or extension of facilities, but by grabbing up competitors and securing control of competitive

lines. There is the same distinction between the acts of these defendants and the normal extension of railway properties, such, for instance, as the building of the line of the Western Pacific from Salt Lake to San Francisco, or the extension of the line of the Chicago, Milwaukee & St. Paul from the Missouri River to Puget Sound, that is drawn in the Tobacco Case and in the Standard Oil Case, between normal acquisitions of property growing out of the growth of a business, and acts denoting an intention to control and monopolize and the securing of this control and monopolization by abnormal methods.

OPINION OF THE MAJORITY OF THE COURT BELOW.

There are some statements of fact in the opinion of the lower court which are hard to understand in view of the testimony, and therefore, we deem it proper, with all respect, to devote a short space to a discussion of that opinion. We will take up these matters in the order in which they appear. In this connection we call attention also to certain errors of law. We regret that this necessarily involves some repetition of testimony heretofore commented on, but such instances are few and not lengthy. The references are to pages in Vol. 12 of the record.

1. At page 204 the court said, with reference to the steamship line between Portland and Oriental ports:

> "The steamship line across the sea had just been organized and had not engaged in business until 1900 or 1901. It was neither organized nor equipped for general traffic, but only for transporting grain and flour originating on the line of the Oregon Railroad & Navigation Company in competition with the Northern Pacific and Great Northern Railroads. Its sailings were scheduled every thirty days, but were in fact irregular and uncertain."

The court overlooked the fact that by the undisputed testimony, for years a line of boats had been operated under contracts with ship owners from Portland to ports in the Orient; that the Portland & Asiatic Steamship Co., the line which the court said had just been organized, was merely the successor in chartering ships of these other lines which had handled this business for years under contracts with the Union Pacific or its subsidiary lines. The testimony of Mr. Stubbs is undisputed that these ships

were active competitors of the Pacific Mail ships out of San Francisco. (Stubbs, Fols. 6617 to 20.) That is also the testimony of Mr. Schwerin, now the General Manager of all the ships, who also stated (Folio 2806) that the Portland & Asiatic maintains a fairly regular schedule out of Portland, and the only time the schedule has varied has been when at the earnest solicitation of Portland shippers it has sent one of the steamers off the regular route to some point at Kadodate or Newschwang. It is also undisputed that these ships were equipped for general traffic, although the outward cargoes were largely composed of flour, and that may have been the chief reason for putting them in service. Whatever the reason for their existence, however, the fact is not denied that the Union Pacific organization sought traffic for these boats through the East; that traffic did move that way; that traffic representatives were at work in the Orient to secure return cargoes, and that those cargoes were sent to the East by the Union Pacific in train loads.

2. The next statement in the opinion (page 294) is:

> "The steamship line from Portland to San Francisco was likewise an inadequate provision for any regular traffic, and particularly transcontinental traffic. Its sailings were irregular and unreliable."

At p. 301 the Court again referred to this steamship line as "a line of steamboats irregularly and infrequently running between that port and San Francisco."

There is no evidence in the record upon which to base such a finding. The testimony is undisputed that prior to the merger the boat line of the Union Pacific from San Francisco to Portland was a regular line; that its steamships

sailed regularly once every five days, and sometimes as often as once in three days. There is ample testimony introduced to show the active competition between this boat line and the rail lines. So far, however, from there being any claim by any party that the steamship line was an inadequate provision for regular traffic or that its sailings were irregular and unreliable, as stated by the trial court, the claim of the defendants on the contrary, was, that the steamship service was so good and the rates that they could make were so low that the railroad could not compete with it. We quote from Mr. Stubbs' testimony, (Fols. 6661 & 2), when under examination by defendants' counsel:

> "Q. I want to take your mind back for a moment to 'Sub-Division "B,"' traffic between San Francisco and Portland, and to ask you as to whether that freight business in your judgment was competitive?
>
> A. I hold that it was non-competitive as between the Southern Pacific and the steamship line.
>
> Q. I will ask you to state your basis for that position.
>
> A. My reasons for that statement are these: The steamship service between San Francisco and Portland is better than the rail service, with this single exception—that the rail service is daily while the steamship service is probably only once in five days. The points of delivery and taking at San Francisco and a. Portland favor the steamship line. In the early opening of the Shasta route, we had some ambition to load our trains north bound, and made some attempts to get the business, but found that we absolutely could not take the business as against the steamship lines, but, besides this is the fact that there were outside competitors with the O. R. & N.; other steamship lines, and steam schooners, that made the rates not only unremunerative, but they were unstable; so, after several attempts to join in

> that business, we quit. And that was before this merger, so-called."

This was the claim of the defendants. The complainant proved by many witnesses that this steamship line was a strong, active competitor of the rail lines both on passenger and freight business; that each line was endeavoring to get the business, and each did get a large amount of traffic. There is no testimony to support the statement of the trial court.

3. At page 295 the court says, with reference to the Chicago, Burlington & Quincy:

> "The last-named company connected at several points with the Union Pacific and was a natural and important feeder for it."

Again, at page 296 the court said:

> "In 1901 the Northern Pacific Company acquired a controlling interest in the Chicago, Burlington & Quincy Railroad, which was a natural and actual feeder to the Union Pacific Company. After an unsuccessful effort to secure from Mr. Hill, who acted for the Northern Pacific Company, a partial interest in that purchase in order to insure a continuation of the fair and equitable relations which had theretofore existed between the Union Pacific and the Burlington roads, Mr. Harriman purchased for the Union Pacific Company a majority of the capital stock of the Northern Pacific Company."

While to some extent business was interchanged between the Union Pacific and the Burlington, it is a serious omission on the part of the court to overlook the fact that the testimony is undisputed that *the Burlington was an active*

competitor of the Union Pacific. This was testified to by Mr. Kahn and Mr. Schiff. It was said by them that it was by reason of the dread that the control of the Burlington by the Northern lines would disturb the existing competitive relations between the Union Pacific and the Burlington that the attempt was made to purchase control of the Northern Pacific. The Burlington was only one of seven or eight connections of the Union Pacific interchanging business with it at Omaha and Kansas City. It also undoubtedly interchanged some business at Denver, but it was an active competitor into Denver and at many other points. It is safe to say that the loss of one connection out of seven at Omaha and Kansas City would, by no possibility, have induced the Union Pacific to spend in the neighborhood of one hundred million dollars in an attempt to buy the Northern Pacific. It was because of the fact that the strong Northern lines were coming into the territory served by the Union Pacific, and because, as Kahn and Schiff admitted, the competition that they might bring was dreaded, that this purchase was made. Therefore it seems strange that the court overlooked the competitive feature of this situation and called attention only to the fact that the Burlington was a feeder of the Union Pacific. The Burlington was no more a feeder of the Union Pacific than the latter was a feeder of the Burlington.

4. At page 296, with reference to the Southern Pacific stock purchase, after speaking of the Rio Grande and its allied lines reaching Ogden, the court said:

> "To meet a menace occasioned by this situation and secure a reliable and permanent arrangement for Pacific coast business, Mr. Harriman, acting for the Union Pacific Company, first tried to purchase

from the Southern Pacific Company the old Central Pacific line extending between Ogden and San Francisco, and, failing in this, entered into negotiations with C. P. Huntington in his lifetime for the purchase of a large block of the capital stock of that company owned by him."

There is not in the record a suggestion by any witness that Mr. Harriman or anybody else representing the Union Pacific at any time tried to buy any of the stock of the Southern Pacific from Mr. Huntington. Even the facile Mr. Kahn in his testimony makes no such suggestion. There is not a hint of anything of that sort in the record. As to the attempt found by the court, to purchase from the Southern Pacific Co. the old Central Pacific line, we have demonstrated in the discussion of that matter that there is no evidence, except hearsay, upon that question. Mr. Kahn, the only witness, who attempted to testify to any such attempt, admitted on cross-examination that he would not swear that he was ever present when any such offer was made, and added to that we have the negative testimony of Mr. Huntington's most intimate associates, Mr. Hawley, Mr. Tweed and Mr. Miles, and also the Union Pacific executive committeeman, Mr. George Gould, that none of them had ever heard of such an attempt.

5. At page 296, immediately after the statement concerning the attempts to purchase stock from Mr. Huntington, just referred to, the court proceeded:

"Being unsuccessful in this, he renewed his efforts to secure that stock from Mr. Huntington's heirs and devisees after his death, in 1900. In this effort he had a competitor in George Gould, acting for the Gould interests."

In the course of our previous discussion we have shown both by the testimony of Mr. Gould and Mr. Hawley that the former was not a competitor of Mr. Harriman or his railroad in connection with the purchase of this stock. Mr Hawley, who sold the stock for the devisees of Mr. Huntington, stated that he never heard of Mr. Gould's trying to buy it; the latter said that he never attempted to buy the stock and would have regarded any such attempt as disloyal to his business associates, as he was on the Union Pacific executive committee with Mr. Harriman at the time.

6. At page 297 the court said:

> "Some time after the acquisition by the Union Pacific Company of the Southern Pacific stock, the latter company became involved in a controversy with the Phoenix & Eastern Railroad Company, the owners of a short line of road in Arizona. Litigation ensued and resulted in the sale of the Phoenix & Eastern Railroad to the Southern Pacific Company. About that time there was a consolidation of a short line of road (about ninety miles) in the northwestern part of California with the Southern Railway Company. This consolidation was made pursuant to the laws of the State of California."

And again, with reference to the same matters, the court said, at page 310:

> "The evidence discloses certain transactions between the Southern Pacific Company on the one hand and the Phoenix & Eastern and the California and Northwestern Railroad Companies on the other hand, which are claimed to have been in restraint of competition between them, but as they affect local transportation only and are not complained of in the bill as substantive wrongs and as neither of the two last-mentioned companies are made parties to this action, it is not perceived how any independent relief with respect to them can be granted. We therefore refrain from considering them except

in so far as they afford relevant evidence on issues joined in the case."

With reference to the foregoing statements, we suggest

(a) We are unable to understand why the court said nothing about the Atchison, Topeka & Santa Fe Railway Company in connection with these transactions. No person reading the opinion would suppose that the Santa Fe had had anything to do with them. As a matter of fact the capital stock of the Phoenix & Eastern was all owned by the Atchison, Topeka & Santa Fe. The controversy mentioned was between the Southern Pacific and the Santa Fe.

(b) With reference to the statement that on page 297 "litigation ensued and resulted in the sale of the Phoenix & Eastern Railroad to the Southern Pacific Company," it should be said that decisions had been rendered both by the Supreme Court of Arizona and the Secretary of the Interior (Folio 8255) in favor of the Phoenix & Eastern; that the railroad of the latter was not sold, but the capital stock of the Phoenix & Eastern was sold by the Santa Fe to the Southern Pacific for the sole purpose of eliminating competition and leaving the Southern Pacific a monopoly in the territory through which the Phoenix & Eastern was projected and in no way resulted from the litigation, the result of the sale being to prevent the extension of the Phoenix & Eastern to a connection with the El Paso & Southwestern, which extension would have created a new joint line to California from the Gulf, and also its extension to Deming, which would have made a new low grade transcontinental line for the Santa Fe itself.

(c) The next sentence in the above quotation from page 297 "About that time there was a consolidation of a short line of road (about ninety miles) in the northwestern part

had to be abandoned. In the meantime a tax deed purporting to convey title to the graded road had been secured by defendant Clark and his associates, who sought to construct a part of a line of railway projected by them between Salt Lake City and Los Angeles, over it."

In connection with this statement it will be observed

(a) The record discloses that in 1898 Mr. Eccles and his associates had incorporated the Utah & Pacific, and had constructed a line of railroad seventy-five miles in length along the old abandoned grade referred to in this statement;

(b) The tax deed obtained by the defendant Clark only covered a part of the grade in Nevada about forty miles in length on the direct line, with a branch line up to Pioche, and the only part of the said grade attempted to be used by defendant Clark and his associates in the construction of their line from Salt Lake to Los Angeles was from Uvada, on the state line between Utah and Nevada down to Caliente, about forty miles.

8. At page 309 the court said:

"The San Pedro line as originally projected and as ultimately constructed does not appear to have been naturally competitive with the Union Pacific, Southern Pacific, or any of the subsidiary lines. It is practically a continuation of the Union Pacific or Oregon Shore Line southwardly, and, generally speaking, its course is at right angles rather than parallel with either the Union Pacific or Southern Pacific line. If it, as an existing route, had been acquired by the Union Pacific it would have served rather as a short cut from Los Angeles to Salt Lake City to avoid the circuitous route between those points via San Francisco than as a natural competitor for any of the business of that route."

The testimony in this case is undisputed

(a) That the San Pedro route after its construction would have been a direct competitor of the Sunset Route of the Southern Pacific on transcontinental business, and of the Ogden Route of the Southern Pacific on both local and transcontinental business; and defendant Harriman and Mr. Munroe, Chief Traffic Officer of the Union Pacific, both swore that it is in fact a competitor even under its present ownership. (Harriman Fol. 1288, Munroe Folios 649 and 6835.)

(b) The route of the Southern Pacific from Salt Lake to Los Angeles, while longer than the San Pedro, is not as circuitous as suggested by the court. It is not by way of San Francisco, but by way of Sacramento, nearly one hundred miles east of San Francisco.

9. At page 309 the court said:

> "It is, however, contended that in the adjustment of differences between the Union Pacific and its allied or subsidiary companies with the Clark interests, resulting in the construction of one line between Salt Lake City and Los Angeles instead of two as projected, there was a suppression of competition which would have existed between the two if they had been built separately. We, however, are unable to discover anything in the transaction except a laudable purpose to adjust differences and construct a line of railroad between the two points which would serve their joint interests as well as those of the public."

In this reference to the defendants the court lost sight of the following facts:

(a) The reorganized Union Pacific made no move to construct a line from Salt Lake to Los Angeles until the project of the Clark interests to build an independent line

between those points had been entered upon and large expenditures had been made;

(b) Mr. Harriman, the moving spirit of the Union Pacific, had declined, when approached for the purpose, to construct such line;

(c) No act was done toward constructing this line until the Union Pacific had acquired the Southern Pacific, and only to protect the monopoly thus acquired and for that purpose, did the Union Pacific enter upon this work of construction of a line paralleling the Clark line.

10. The court further said:

> "The evidence discloses that it was not feasible to construct two lines of road over the only practicable route through the canyon in the mountains, known as Meadow Valley Wash. This, with other reasons of a practical nature, fully justified the abandonment of the project of constructing two lines and the consolidation of them into one."

As to this finding

(a) The court overlooked the fact that both roads could have been built through the Wash, and in fact two lines were surveyed under the joint survey heretofore discussed, neither line crossing the other throughout the entire length of the Wash, and the evidence shows they were both *feasible*, although expensive. (Moore Fol. 4258).

(b) That neither company, under the laws of the United States, had the right to monopolize that canyon if it had been deemed best to build through it;

(c) The reasons of a practical nature referred to were simply that the defendants undertook to parallel the Clark road to prevent the destruction of the monopoly they had obtained by the Southern Pacific purchase, and the Clark

interests finally became satisfied that they would have to surrender or their line would be financially unprofitable.

11. The court said, page 310:

> "Some minor agreements fixing the relations between the new San Pedro line and the other lines composing the system of the Union Pacific as well as the provisions for fixing through and local rates were made, but these are so incidental to the main transaction already found not to have violated the interstate commerce act as to warrant no further consideration.
>
> If it be true, as already pointed out, that the San Pedro line was not naturally competitive with the Union Pacific or Southern Pacific lines none of these incidental things would disturb legitimate competition within the purview of the anti-trust act."

(a) If this statement of the court is correct, any two railroads reaching a common point, can enter into an agreement that each will not invade the territory of the other by new construction, for a period of ninety-nine years, and such an agreement will be held valid by the courts. The Short Line stipulated that it would not for ninety-nine years build south of Salt Lake City. The San Pedro agreed that it would not build north of Salt Lake City, either main lines or branches.

(b) If this finding is correct it is lawful for two railroads in the same territory to stipulate that one will adopt the local rates of the other and that those rates shall not be changed for a period of ninety-nine years without mutual consent. That was the agreement made between the Southern Pacific and the San Pedro. Can it be successfully argued that the lower court was right in saying that these are incidental things which would not disturb legitimate competition within the purview of the law?

12. At page 299, after finding that many witnesses testified that the Union Pacific and Southern Pacific prior to 1901, were competing lines for transcontinental business and had separate soliciting agencies, the court proceeded:

> "The proof amply shows that they were active in securing routings of freight and passengers to California, but that they did it in two ways—one by direct solicitation of shippers and passengers and the other by securing and fostering friendly relations with the initial carriers at the points of origin of the traffic. The initial carrier commonly was able to and did determine the routing of all traffic. Notwithstanding the right of the shipper in the abstract to do so, the initial carrier practically settled the question so as best to serve its own interest."

The evidence in this case does not justify this finding as to the initial carrier controlling the routing. While one or two of the traffic men of the defendants, notably Stubbs, testified that a soliciting agent worked closely with his connections, which is undoubtedly true, the overwhelming evidence in the case is that on transcontinental traffic the separate agencies were most powerful in securing and routing traffic, and all the witnesses, both those for the complainant and the defendants, not only railroad men but the traffic representatives of large shippers, showed clearly the influence of the representatives of the transcontinental lines in routing the shipments, and the evidence does not in any way point to the conclusion stated by the court that the initial carrier practically settled the question so as best to serve its own interest. The traffic moving to San Francisco from the East was commonly routed by the consignees in that city, who were thousands of miles from the initial lines. (Jilson, Folios 2915-18, Toll, Folio

4862). Denver business from Atlantic seaboard was routed by consignees in Denver (Munroe, Traffic Manager of Union Pacific, 6809.)

13. At page 299, the court said:

> "The actuating intent and purpose of the Union Pacific Company in acquiring the Huntington stock was to secure a permanent and reliable connection at Ogden for through traffic over the Central Pacific line to the Pacific coast, and thereby to save the necessity of constructing a road of its own from Ogden to San Francisco."

This is repeated at page 305 in the following language:

> "The immediate and actuating intent and purpose of the Union Pacific Company in acquiring the Huntington stock and thereby the control of the operations of the Southern Pacific line were, according to the proof, to secure a permanent working and reliable connection at Ogden over an existing road for its through traffic, a connection not dependent upon the grace of a dominant copartner but one within its own control."

With reference to this statement it should be said that there is no evidence to support it, except the testimony of the witness Kahn, as to what he said was in the minds of the executive committee of the Union Pacific and of Mr. Harriman. We have in another part of the brief clearly demonstrated the illegal intentions of these gentlemen by a series of acts which cannot be answered by any mere statement of innocence. But even if the fact was as stated by the trial court, that would be no defense in this case. The desire of the Union Pacific to own the Central Pacific, instead of constructing its own line as did the Denver &

Rio Grande, which has since built the Western Pacific, would not make lawful the purchase of the Sunset Route and of the Panama Route and the elimination of all the competition in the Western country, that was involved in such purchase. In fact, this is conceded by the trial court in the following statement which immediately follows the last quotation:

> "We recognize the proposition that if the necessary and direct result of the purchase of the Huntington stock was to destroy or substantially suppress free and natural competition, before then existing between the two companies, or if that purchase put it within the power of the Union Pacific Company to destroy or suppress such competition, the latter named company would undoubtedly be held to have intended the natural and reasonable consequences of its act and notwithstanding the dominant purpose just mentioned, would have violated the anti-trust law. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 234; *Northern Securities Co. v. United States*, 193 U. S., 197, 328, 332, 357."

That statement of the law which we have just quoted should be decisive of this case applied to the facts as they actually exist. It is exactly what the Government has contended for, and it is because of the failure of the trial court to give the proper effect to the undisputed testimony in the case and apply such testimony to the law, which they concede to be as claimed by the Government, that the error in the decision below consists.

14. At page 300, speaking with reference to the competition carried on by the Union Pacific against the Southern Pacific, the court said:

"Claim is not made that it was such a competitor for any business originating on or near to its main line, but only for business originating in New York or Pittsburgh common points a thousand or more miles away from its lines."

We do not understand how the court happened to make this statement of our position for it was claimed by the government that the competition existed as to *all business East of the Missouri River*. This claim is supported by the evidence of scores of witnesses. (See pp. 91 to 168 this brief.) It was argued at length in the brief filed with the court below and in the oral argument.

15. At page 302, it was held that the Union Pacific, being only an intermediate link in the through line from the East to the Coast, could not have been a competitor of the Southern Pacific, and further, that it could not have been a competitor because it used the Southern Pacific line from Ogden to San Francisco. We will not here argue out this question, it being fully covered in other parts of the brief, except to call attention to the failure of the trial court to notice the fact that the Union Pacific had rate-making powers to the Pacific Ocean from the Missouri River; that at the river it connected with many roads each seeking to interchange business with it. The success with which the Canadian Pacific had operated under a differential for over eleven years in connection with the same roads shows how eager they would have been to join the Union Pacific in view of its great influence in distributing traffic coming off its own rails eastbound, in any controversy that might have arisen; and the court also ignored the fact that Mr. Stubbs, the chief traffic officer of the Southern Pacific and now of both lines, stated that the divisions between the Union Pacific and the Southern Pa-

cific on the Ogden Route were more than fair to the Union Pacific, but were all the Southern Pacific could get, thus recognizing the power possessed by the Union Pacific to maintain itself as a competitor of the Sunset Route or of any other route.

16. At page 303 the court said:

> "Instead of the situation being competitive the two roads really acted together and co-operated between themselves and with their connections in securing as much of the transcontinental traffic, each for the other, according to their respective facilities as they could get; and participated in the total revenue on a basis of comparative service rendered. Their relations were like those of a limited partnership rather than those of hostile competitorship."

With respect to this statement it is sufficient to say that it contradicts the testimony of hundreds of witnesses—practically all of the witnesses who testified in the case. The evidence is overwhelming that the competition between the two systems was most intense.

17. At page 304, the court, recognizing that the evidence as to the competition between the Union Pacific and Southern Pacific systems was overwhelming, said:

> "The voluminous evidence of officers, agents and shippers to the effect that active competition existed between the Union Pacific and Southern Pacific roads prior to 1901 must be considered in the light of the legal and physical relations of the roads to each other and of other related facts. Whether there was competition or not, in view of all these things, was a mixed question of law and fact and not susceptible of determination by the preponderance of proof as an issue of fact only."

This we take to be an admission that if the question as to whether competition existed between the two systems is one of fact, the Government has established this fact by an overwhelming mass of testimony. In our brief of the law we have called attention to the direct rulings of the courts that the question as to whether two roads are or are not competing, is one of fact. We have been unable to find a suggestion in any opinion that it is a question of law or mixed question of law and fact. The words, "competing" and "competitor" are clearly and simply defined in the dictionaries. There is nothing mysterious about these words. The statement we have above quoted is immediately followed by this language in the opinion:

> "Without doubt there was active competition, but it was chiefly in co-operation with initial lines which had the routings of freight and for the benefit of such initial lines and their connections to Omaha or Kansas City, as well as for the benefit of the Union Pacific Company itself."

This seems clearly an absolute contradiction of the language immediately preceding which we have just commented on. It certainly can make no difference, if there was active competition, that the connections of the Union Pacific shared with it in the results of such competition. This competitive business in which they so shared was taken away from the Sunset line of the Southern Pacific.

18. At page 305 the court said:

> "In this condition of things the opinion of any number of witnesses as to whether the two were competing lines within the meaning of the law is of little aid, and the general statement of those witnesses that the two roads had separate soliciting

agents throws little if any light upon the ultimate issue."

It is interesting to compare this last statement with the following from the opinion of Mr. Justice Peckham in the Joint Traffic Case, 171 U. S. page 564.

"This is not all, however, for the agreement further provides that the managers are to have power to organize such joint freight and passenger agencies as they may deem desirable, and if established they are to be so arranged as to give proper representation to each company, and no soliciting or contracting passenger or freight agency can be maintained by any of the companies, except with the approval of the managers. They are also charged with the duty of securing to each company, party to the agreement, equitable proportions of the competitive traffic covered by the agreement, so far as can be legally done. The natural, direct and necessary effect of all these various provisions of the agreement is to prevent any competition whatever between the parties to it for the whole time of its existence. It is probably as effective in that way as would be a provision in the agreement prohibiting in terms any competition whatever."

19. At pages 305 and 306 the court said, with reference to competition between the two systems:

"It is contended that it was destroyed or suppressed in transcontinental business between the Atlantic seaboard and middle states on the one hand and the Portland and Willamette Valley common points on the other hand. The route of the Southern Pacific for this business was by its own line via New Orleans and San Francisco to Portland and that of the Union Pacific was by its own line from Omaha and Kansas City to Ogden, together with its connections and sub-connections eastward from Omaha and Kansas City, and its subsidiary lines.

the Oregon Short Line and Oregon Railroad & Navigation Company running northwesterly into Portland and the valley. The geographical relation of these routes to each other and the dependence of one of them, at least, upon voluntary arrangements with other lines would seem to render natural and fair competition between them for the Portland trade impossible, but the slight volume of the traffic here involved affords a controlling and decisive consideration."

With reference to this statement it should be observed

(a) The testimony is undisputed that in addition to the Sunset Route of the Southern Pacific it was an active competitor of the Union Pacific on business between the Atlantic seaboard and the middle States on the one hand and Portland and Willamette Valley common points on the other by the Sacramento Route, and thence to the East over the Rio Grande and its connections. This is ignored by the trial court in this statement;

(b) As to the following language,—"the dependence of one of them, at least, upon voluntary arrangements with other lines would seem to render natural and fair competition between them for the Portland trade impossible,"—it will be seen that upon the business from the middle States the Southern Pacific as well as the Union Pacific was dependent upon voluntary arrangements with other lines. And this is only another and extreme application of the rule laid down by the trial Court, that there can be no natural and fair competition between railroads unless each competitor is complete in and of itself. How the court could arrive at this conclusion, in view of the clear language of many cases, such as the case of *State v. Vanderbilt* in Ohio, cited and approved by this court in the Louisville & Nash-

ville case, which is fully treated in our brief of the law, we are at a loss to understand. In the Vanderbilt case the lines engaged in the competition had their Southern termini at Cincinnati. The Northern terminus of one was at Cleveland on Lake Erie, the other at Toledo upon the lake. The traffic which was the subject of the competition was brought up to Cincinnati from the South by connections of these two lines, and was taken to points in the Northwest as well as in the Eastern parts of the United States from the respective Lake Erie ports by other connections. They were both what the court in this case terms "intermediate links" in the transportation. The Supreme Court of Ohio held, upon that state of facts, that they were parallel and competing lines, and that one could not acquire the other. This ruling met with the approval of this court in its opinion in the Louisville & Nashville case:

(c) The court further considered the slight volume of the traffic as affording a controlling and decisive consideration against the complainant. This is only one of a number of items covering traffic as to which there was energetic competition between the two systems that are disposed of in this way, the court considering each by itself and stating that the traffic and revenue involved amounted to only a small percentage of the total earnings of the respective systems. All the earnings from the great competitive passenger business of the two companies are left out of consideration in making up these figures, but in any event, as pointed out by Judge Hook in his dissenting opinion, this is an impossible rule to adopt. It makes no difference what the total earnings of the Southern Pacific system are. It does an enormous business in Texas, and between New York and Texas and Arizona points. It has a tremendous local traffic in California, and between

California and Nevada points. That fact certainly has no bearing upon the destruction of competition in places where the public is, by the consolidation, deprived of the benefit of competition. The Pennsylvania Railroad and the Baltimore & Ohio are competing for business between Pittsburgh and Washington, but if the rule adopted by the trial court is approved here, the Pennsylvania would be permitted to acquire the line of the Baltimore & Ohio between Pittsburgh and Washington because the local business between those points is a very small percentage of the total earnings of either one of the two systems. The business done by two competing roads in many cases could be thus dissected, and it would be found that each separate item amounted to only a very small percentage of the total earnings of the two. The rule adopted by the court below would make valid the acquisition of these various sections upon the ground that each one amounted to but a small percentage of the aggregate business. The rule is perfectly novel. It is not supported by authority. The same argument was attempted in the Northern Securities case, as will be seen by the answer and briefs printed in the report. (See answer Northern Securities Co., 193 U. S. 239. Brief Mr. Young, 193 U. S. 261-2.) It was not dignified by even a reference in the opinion of the lower court or of this court. The consolidation of the Union Pacific and Southern Pacific absolutely eliminated competition, present and future, as to a very large and growing traffic between Portland and San Francisco. The immediate effect was to put up rates, in some cases over 50%. The testimony is undisputed that since that date when the rate is raised upon one line, it is automatically raised on the other by a rate clerk. Is it right that the people in this growing section of the country should be subjected to such charges because

the Union Pacific does a large local business in Nebraska or the Southern Pacific a large local business in Texas? The only rail lines between Utah points and Portland and vicinity are the two lines that were so consolidated. The length of the Union Pacific line which is the shorter of the two between those points, is substantially the same as that of the Pennsylvania Railroad between New York and Chicago. The lumber supply of Salt Lake and all of that intermountain region comes largely from Portland and vicinity. Can it be that the people in this great and constantly developing region are to be placed at the mercy of a combination of this kind because each of the parties earns a lot of money at some remote part of the country?

20. At page 308, in discussing the purchase of Santa Fe stock by individual defendants, called in the opinion "a syndicate of men interested in the Union Pacific Company," the court said:

> "Even if the motive of the purchasers was to gain some inside information concerning the operations of the great competitor of the Union Pacific Company, they chose an entirely lawful way for doing it, and their acts afford no reason for judicial condemnation."

(a) If the connections of railroads cannot be taken into account, then we do not understand why the Santa Fe is termed by the court "the great competitor of the Union Pacific Company." It is not a great competitor for any business except such as is turned over to one or both of the competitors by connections;

(b) If it is lawful for the controlling spirits in one company to acquire stock in a competitor for the purpose

of a voice in the councils of such competitor, to adopt the statement of Mr. Kahn, (Fol. 7881) then the decisions in the Standard Oil and Tobacco cases have been rendered in vain.

21. The court said, page 310:

> "The proof shows that after 1901 as well as before the rates for transcontinental traffic were the same over both the Union Pacific and Southern Pacific lines."

but neglected to observe

(a) That the evidence is undisputed that all rates were made in conference of the lines west of the Missouri River to which all interested railways practically turned over the making of transcontinental rates and that in such conferences the Union Pacific and Southern Pacific were prior to 1901 separate, and frequently competing with each other;

(b) That the Union Pacific had power to make a rate from the Missouri River line to tide water at Portland, and that a cut in that rate would result in a cut in all transcontinental rates, including those over the Sunset Route of the Southern Pacific or any route that might be made by using a portion of the Southern Pacific lines;

(c) That since 1901 the possibility of such competition between the Union Pacific and Southern Pacific has been eliminated;

(d) That since 1901 transcontinental rates have been largely increased, and the rates on business between Portland and San Francisco were grossly increased within three months after the merger, and have since remained at such increased figure.

22. Immediately following the foregoing statement, the court said:

> "There has since then been with respect to either of these lines no impairment of service;"

This conclusion cannot be supported by the evidence unless this Court is willing to hold that

(a) Lengthening the time of the fastest merchandise train between Omaha and Ogden from less than fifty-five hours to over one hundred hours is no impairment in the service (see this brief pp. 521-528-9);

(b) Lengthening the time of the fastest passenger train from New Orleans to San Francisco over twenty-four hours, is no impairment of service (see this brief p. 534);

(c) Destroying the efficiency of the Panama Route by operating boats that are not fit to transport freight, is no impairment of service (see this brief pp. 511 to 518);

(d) With a line ninety miles shorter from Omaha to San Francisco, grades reduced, twenty-three complete circles of curvature removed, the lengthening of the time of all passenger trains, including the Overland Limited, is no impairment of service (see this brief pp. 533-4);

(e) Now consuming over four days (see this brief p. 521), in the actual haul of freight from the Missouri River to Ogden (1,000 miles) when previous to the merger, freight was moved all the way from Chicago to San Francisco, including all delays at transfers (about 2,300 miles) in from five to seven days, (see testimony of Mr. Knight, formerly agent of the Union Pacific at Chicago, Folio 3011), represents no impairment in the service;

(f) The other instances to which we have called attention in another part of this brief (see this brief pp. 521 to 537) in which the service has deteriorated, do not constitute

impairment; but we submit that the finding of the trial court is contrary to the testimony. A general statement such as was made by Mr. Kruttschnitt that the service is good cannot be regarded in the face of the specific instances in which the service has greatly deteriorated which we have heretofore discussed in detail.

23. At pages 310 and 311 the court said:

> "The large number of initial carriers striving for that traffic (transcontinental traffic) have continued their active solicitation for business over the line which assured them the longest haul or otherwise benefited them most, and although some agents of the two roads which before 1901 were separate are now joint, they have continued to exercise their influence to secure business for either road according to its availability and always in opposition to other active competitors like the Santa Fe and the Denver & Rio Grande roads."

(a) It is a fact that these joint agents have, since the merger acted for both companies, but before the merger the influence of the separate agencies was exercised in favor of the separate systems. Each one was endeavoring to secure the business as against the other, and the shippers were benefited by many things in the way of service which were detailed in the testimony;

(b) We are again met with the statement that the Santa Fe and Denver & Rio Grande are active competitors, and again ask how either of those lines can be competitors, either active or otherwise, on transcontinental business except as acting in harmony with their connections. No transcontinental business originates on the Denver & Rio Grande; no transcontinental business moving to or from any point East of Chicago originates on the Santa Fe, but

the court says, as the complainant has always contended, that both of these lines are active competitors of the Union Pacific and Southern Pacific. If that is so, why is not the Union Pacific with its connections, a competitor likewise of the others?

24. At page 311 the court said:

> "None of the minor points charged to have been deprived of competitive opportunities by the Huntington purchase are shown to have suffered as a result of that purchase."

The undisputed testimony is that in many cases they have suffered both by increase in rates and by impairment of service.

25. At page 311 the opinion proceeds:

> "Moreover, the fact that the Union Pacific Company did not secure or undertake to secure control of the Santa Fe road, a thoroughly sufficient, well-equipped and powerful rival for transcontinental business, or the Denver & Rio Grande road, a potential and later an actual powerful rival for the same business, affords additional and conclusive evidence of no such combination or conspiracy."

(a) We are again met with the statement that both of these other systems are rivals and competitors of the Union Pacific, although, as we have shown, all three depend upon their connections to handle this traffic;

(b) As heretofore demonstrated, a powerful influence was acquired in the Santa Fe, resulting directly in the elimination of competition in the most offensive form;

(c) By the undisputed testimony the Union Pacific endeavored to secure a half interest in the control of the Denver & Rio Grande.

CONCLUSION.

The appellant submits that it has demonstrated that the respondents have violated both the first and second sections of the Sherman Act; that the result of such violation has been to impose grievous hardships upon the people of the West, that the decree should be reversed, and that the Government have proper relief in the premises.

Respectfully submitted,

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